2016

Retamco Operatinrg Inc., Plaintiff/Appellee vs. David Sweet and Alberta Gas Company; Defendants/Appellants

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

RETAMCO OPERATING INC., Plaintiff/Appellee, vs. DAVID SWETT AND ALBERTA GAS COMPANY, Defendants/Appellants.	Case No. 20150544–CA

OPENING BRIEF OF APPELLANTS

Appeal from a Final Order
in the Eighth District Court, Uintah County
Honorable Edwin T. Peterson presiding

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JURISDICTION STATEMENT

Pursuant to Utah Code Ann. §78A-3-102(3)(j), the Utah Supreme Court has jurisdiction over appeals from any court of record over which the Court of Appeal does not have original appellate jurisdiction. However, pursuant to Utah Code Ann. §78A-3-102(4), the Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, including the appeal in this matter of an order from the Eighth District Court in a civil contract dispute. The Court of Appeals has appellate jurisdiction over cases transferred to the Court of Appeals from the Supreme Court pursuant to Utah Code Ann. §78A-4-103(2)(j).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

I. THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANTS' MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT.

The District Court's denial of Defendants' Utah R. Civ. P. 60(b) motion is reviewed on an abuse of discretion standard. *Russell v. Martell*, 681 P.2d 1193, 1194 (Utah 1984); *Menzies v. Galetka*, 150 P.3d 480, 501-502 (Utah 2006); *Salazar v. Chavez*, 282 P.3d 1033, 1034 (Utah 2012). However, the District Court's discretion is not unlimited. *Menzies*, 150 P.3d at 502. "A district court should exercise its discretion in favor of granting relief so that controversies can be decided on the merits rather than on technicalities." *Id.* [I]t is an abuse of discretion for a district court to deny a 60(b) motion

to set aside a default judgment if there is a reasonable justification for the moving party's failure and the party requested 60(b) relief in a timely fashion. *Id.*

In addition to the above standards of review, the Utah Supreme Court in *Menzies* stated the following additional standards in reviewing a denial of a Rule 60(b) motion.

> [A] district court's ruling on a motion to set aside a default judgment must be based on adequate findings of fact and on the law. We review a district court's findings of fact under a clear error standard of review. We review a district court's conclusions of law for correctness, affording the trial court no deference. If a district court's ruling on a 60(b) motion is based on clearly erroneous factual findings or flawed legal conclusions, the district court has likely abused its discretion.

Id. (citations and internal quotation marks omitted). *See Lund v. Brown*, 11 P.3d 277, 279 (Utah 2000); *May v. Thompson*, 677 P.2d 1109, 1110 (Utah 1984) (per curiam).

This issue was preserved for appeal. (R. 331).

II. THE JUDGMENT SHOULD BE REVERSED BECAUSE THE TRIAL COURT FAILED TO FOLLOW Utah R. Civ. P. 54(c)(2) and 55(b)(2) AND THUS ACTED OUTSIDE ITS AUTHORITY WHEN IT ENTERED DEFAULT JUDGMENT UNSUPPORTED BY EVIDENCE IN THE RECORD.

Whether a court acted outside its authority is reviewed under the standard of correctness of error. *See Russell v. Martell*, 681 P.2d 1193, 1195 (Utah 1984); *Katz v. Pierce*, 732 P.2d 92, 95 (Utah 1986); *State v. Sixteen Thousand Dollars U.S. Currency*, 914 P.2d 1176, 1178 (Utah App. 1996); *Wison v. City of Hildale*, 330 P.3d 76, 80-81 (Utah 2014).

This issue was preserved for appeal. (R. 337, 480).

III. **THE TRIAL COURT ERRED WHEN IT ENTERED A RULING AND FINAL ORDER ON DEFENDANTS' MOTION TO SET ASIDE A DEFAULT JUDGMENT WHEREIN THE COURT DENIED DEFENDANTS' REQUEST FOR AN EVIDENTIARY HEARING IN LIGHT OF THE DEFAULT JUDGMENT WHICH ALLOWS FOR AMENDMENT OF THE JUDGMENT UPON SUBMISSION OF ADDITIONAL EVIDENCE.**

Whether the court erred in denying an evidentiary hearing is reviewed under the standard of correctness of error. *Pitts v. Pine Meadow Ranch, Inc.*, 589 P.2d 767, 769-770 (Utah 1978); See also *Russell*, 681 P.2d at 1195; *Katz*, 732 P.2d at 95 (Utah 1986); *Sixteen Thousand Dollars U.S. Currency*, 914 P.2d at 1178; *Wisan*, 330 P.3d at 80-81.

This issue was preserved for appeal. (R. 480).

RULES OF CIVIL PROCEDURE DETERMINATIVE OF THE APPEAL

RULE 55. DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter the default of that party.

(b) Judgment. Judgment by default may be entered as follows:

(b)(1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain, upon request of the plaintiff the clerk shall enter judgment for the amount claimed and costs against the defendant if:

(b)(1)(A) the default of the defendant is for failure to appear;

(b)(1)(B) the defendant is not an infant or incompetent person;

(b)(1)(C) the defendant has been personally served pursuant to Rule 4(d)(1); and

(b)(1)(D) the plaintiff, through a verified complaint or an affidavit submitted in support of the default judgment, sets forth facts necessary to establish the amount of the claim, after deducting all credits to which the defendant is entitled, and verifies the amount is warranted by information in the plaintiff's possession.

(b)(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment against the state or officer or agency thereof. No judgment by default shall be entered against the state of Utah or against an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

Utah R. Civ. P. 55.

RULE 54. JUDGMENTS; COSTS

(c) Demand for judgment. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

Utah R. Civ. P. 54(c).

STATEMENT OF THE CASE

I. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION IN THE COURT BELOW

On January 12, 2015, the Court entered a Default Judgment against Defendants David Swett and Alberta Gas Company (hereinafter collectively the "Defendant") in the amount of $465,628.00 wherein the Court ordered Defendant to provide accounting to the Plaintiff and provided that the judgment may be amended based on the accounting. (R.115-118). On February 20, 2015, the Defendant filed a Motion to Set Aside Default and Default Judgment. (R.147-149). Defendant, in its Memorandum in Support of Motion to Set Aside Default and Default Judgment, also asked the Court, in the alternative to setting aside the Default, to grant a hearing on the damages. (R.337). Following further briefing on Defendant's Motion to Set Aside, the Court entered a Ruling and Order on May 7, 2015, (R.513-517), and an Order on May 25, 2015, (R.522-523), on the Defendant's Motion to Set Aside, wherein the Court denied the Motion to Set Aside, denied the request for evidentiary hearing (R.515-516), and determined that it was the final order in this matter. (R.522). The Notice of Appeal was timely filed on June 24, 2015. (R.526-528).

II. STATEMENT OF FACTS

1. Defendant and Plaintiff/Appellee Retamco Operating, Inc. (hereinafter the "Plaintiff") are parties to an oil and gas well operating agreement covering the Gusher Prospect area and the Federal 1-33 well (the "well" or "Federal 1-33"). (R. 324).

2. Defendant acquired the right to operate the Federal 1-33 well from CDX Gas, LLC ("CDX") in 2002, pursuant to an assignment of the Operating Agreement. (*Id.*).

3. CDX, in turn, had acquired the well operation rights from Plaintiff in 2001. Plaintiff owned and operated the well between 1997 and 2001 before assigning its rights to CDX. (*Id.*).

4. As a prior operator, Plaintiff has a general historical knowledge of the workings of Federal 1-33, including the typical amount of oil and gas production, the grade of oil and gas produced, market prices for the grade of oil and gas produced by the well, and associated operating expenses. The Federal 1-33 well is a marginal producer at best and required substantial expense to rework. (*Id.*).

5. Although Plaintiff was no longer designated as an operator after 2001, it remained a party to the Operating Agreement by virtue of owning oil and gas leases or interests within the defined contract area. With respect to Federal 1-33, Plaintiff was a "non- consenting" or working interest party. (*Id.*).

6. All parties to the Operating Agreement, including Plaintiff, are contractually obligated to pay their proportionate burden of production costs. In addition, as a "nonconsenting" party, Plaintiff would be subject to a charge by Defendant of 300% of the nonconsenting party's share of production costs (the "bonus"). This bonus is owed in the event Plaintiff doesn't pay its share of production costs – which it never has – to compensate Defendant for taking the risk of further investment in reworking a well.

Plaintiff would thus also be responsible to pay its share of capping the well once operations are complete, which is often a costly endeavor. (R. 324-25).

7. Based on Plaintiff's accumulating unpaid expenses and the small likelihood that Federal 1-33 would produce oil and gas in profitable quantities, Joe Glennon, Plaintiff's Vice President, informed Defendant in 2009 that Plaintiff intended to surrender its existing interests in the well in an attempt to relieve itself of production cost obligations and penalties. (R. 325).

8. After Plaintiff informed Defendant that it intended to relinquish its interests in Federal 1-33, Plaintiff never requested an accounting and never contacted Defendant about its share of costs and/or profits, until it filed the instant lawsuit. (*Id.*).

9. Defendant owns and operates six other wells in the Duchesne area and therefore, due to the economies of scale, he initially believed it would be worth Defendant's time and effort to operate Federal 1-33, notwithstanding the low margin of profit. (*Id.*).

10. Ultimately, however, Defendant entered into negotiations with, among others, Diversified Energy Holdings, Inc. and American Money Managers to sell the well. After obtaining offers to purchase from these entities in 2014, and believing that a sale was imminent, Defendant received assurances that the purchaser would address any claims related to the assets. (*Id.*).

11. Thereafter, Defendant was served with Plaintiff's Complaint. Believing Plaintiff's claims were being taken care of by the prospective purchaser, and confused by

Glennon's prior representations regarding Plaintiff's abandonment of interest in the well, Defendant failed to timely respond to the Complaint. Ultimately, those prospective sales failed. (R. 325-26).

12. As soon as Defendant received notice that default judgment had been taken against Defendant, Defendant contacted counsel to assist Defendant. (R. 326).

13 Although Plaintiff filed this action as a "Tier 2 case" – meaning that its claimed damages did not exceed $300,000 – Plaintiff submitted an affidavit and proposed judgment asking for far in excess of the Tier 2 damages ceiling, once it learned that Defendant had not responded to the Complaint. (R. 6, 66, 91, 326).

14 The initial Affidavit of Joe Glennon, supporting Plaintiff's proposed Default Judgment, used unsupported and inadmissible numbers, wherein Glennon calculated that the well generated revenue of $1,258,674. Based on Plaintiff's 13% overriding royalty interest and 25% working interest, Glennon calculated Plaintiff's share of revenue at $415,628. (R. 326).

15. The proposed Default Judgment however asked the Court to award $456,628. (*Id.*).

16. There was no explanation for why Plaintiff sought $41,000 more than Glennon calculated in its proposed Default Judgment ($456,628 versus $415,628).

17. Indeed, the Court recognized that the amount of damages calculated by Mr. Glennon did not correspond with the amount being sought in the proposed Default Judgment and declined to sign the Default Judgment. (R. 88, 326-27).

18. Plaintiff then submitted an Amended Affidavit of Joe Glennon and an Amended Default Judgment on January 12, 2015. But rather than clarify which damage calculation was correct – as between the Glennon affidavit and the proposed Default Judgment – Plaintiff simply revised the total damage amount in both the affidavit and default judgment to $465,628, even though none of the underlying bases for Glennon's calculation changed. (R. 327).

19. In the amended affidavit, Glennon applied the exact same quantities and prices of oil and gas to reach the same revenue amount ($1,258,674) and also applied the same percentages of royalty and working interests purportedly owned by Plaintiff. And yet, Glennon re-calculated Plaintiff's damages at $465,628. (*Id.*).

20. The proposed Amended Default Judgment (signed by the Court on January 12, 2015) awarded Plaintiff the same amount. (*Id.*).

21. Glennon purportedly based his calculation on a "production report," that indicated the Federal 1- 33 well produced 15,558 barrels of oil and 22,957 mcf of gas between 2002 and 2014, without producing a copy of the production report. (*Id.*).

22. Glennon failed to inform the Court that, in addition to a production report, the Division of Oil, Gas and Mines also makes available a "disposition report." The disposition report – readily available to Glennon – indicates that none of the gas produced from the well was ever sold. Every mcf was used for operations. (R. 328).

23. Eliminating natural gas production reduces Glennon's gross revenue figure by $91,828 (22,957 mcf X $4.00/mcf). (*Id.*).

24. Glennon also overstated oil sales revenues. Glennon derived his calculations using a blanket price of $75.00 per barrel multiplied by the barrels of oil produced from the well between 2002 and 2014 (15,558) to determine gross revenue of $1,166,850. (*Id.*).

25. Glennon then calculated Plaintiff's share of the revenue by assuming that Plaintiff was entitled to 38% of gross revenue from the well (13% overriding royalty plus 25% working interest). (*Id.*).

26. Applying a $75.00/bbl price to the Uintah Basin Black Wax oil produced and sold by Defendant for the entire 12 year period results in a highly inflated gross revenue figure. Historical crude oil prices are readily available from Chevron's Crude Oil Marketing website, and demonstrate that the per-barrel price paid for Uintah Basin Black Wax between 2002 and 2014 averaged $62.07/bbl rather than the $75.00/bbl claimed by Glennon. (*Id.*).

27. The disposition report also reflects the amount of oil sold by Defendant each month. Multiplying Chevron's posted per-barrel price for each month by actual barrels sold during the respective month equals $824,800.06 rather than $1,166,850 claimed by Glennon. (*Id.*).

28. The Chevron posted price should have been adjusted for gravity, which means that Defendant received even less per barrel than the posted price (approximately $2.25 per barrel). Payment Details for 2012-2013 provided by Summit Energy, the

purchaser of Alberta's oil, demonstrate the actual net barrels of oil purchased each month (which generally mirror the numbers reported on the disposition report), the Chevron posted price for Uintah Black Wax, and the gravity adjusted price per barrel. (R. 328-29).

29. Defendant indicated to the trial court in his Memorandum in Support of Motion to Set Aside that he was is in the process of gathering payment details for 2002 through 2011 in order to provide the Court with accurate revenue for the entire relevant time period. However, even based on publicly available information (from the State of Utah's disposition report and Chevron's Crude Oil Marketing website) Glennon's calculations were incorrect. Even without considering the gravity deduction, Glennon overstated oil-related revenue from the Federal 1-33 by $342,049.94 ($1,166,850 - $824,800.06). (R. 329).

30. The amount of revenue subject to Plaintiff's 25% working interest is not gross revenue; rather, Plaintiff's working interest is based on the amount of revenue remaining after Plaintiff's 13% override and the federal government's 6% royalty is deducted from gross revenue. (*Id.*).

31. The amount of revenue subject to Plaintiff's working interest is no more than $717,576.05. (This number is based on the Chevron posted price and the gravity adjusted price would further reduce Alberta's revenue by approximately $2.25 per barrel). (*Id.*).

32. Plaintiff's working interest obligates it to share in the well's losses as well

as its profits. Expenses related to the well totaled $1,212,740 between 2002 and 2014. (*Id.*).

33. Glennon's affidavit did not account for any costs of production – neither the non-consent bonus or Plaintiff's share of straight production costs. (R. 330).

34. After deducting expenses, the well experienced a loss of $495,163.95 during the relevant time period. Plaintiff's minority working interest obligates it to 25% of that loss – or $123,790.99. (*Id.*).

35. Since Plaintiff refused to pay its share of production costs, any working interest share of production may be subject to the 300% non-consent bonus – or $371,372.96. (*Id.*).

SUMMARY OF ARGUMENTS

The trial court abused its discretion in denying Defendant's Utah R. Civ. P. 60(b) Motion to Set Aside Default and Default Judgment because there was reasonable justification for Defendant's failure to file and answer and because the trial court's Ruling and Order and subsequent Order, designated therein as a "final order," were based on erroneous factual findings and flawed legal conclusions in denying an evidentiary hearing on damages. Defendant, in prior communications with Plaintiff, reasonably believed that Plaintiff had abandoned its working interest in the subject oil and gas well and reasonably believed that a prospective purchaser of the well would resolve the litigation. The trial court also abused it discretion because the findings of fact and conclusions of law stated

in the May 7, 2015, Ruling and Order were erroneous where it determined that Rule 55(b) did not require the trial court to grant Defendant an evidentiary hearing on damages in light of the Default Judgment which allows for modification of the judgment upon later submission of evidence by the Defendant and in light of the judgment which was not supported by the evidence submitted by the Plaintiff or the demand made in the complaint.

The trial court erred in denying Defendant's request for evidentiary hearing in Defendant's Motion to Set Aside Default and Default Judgment and acted outside its authority in light of Utah R. Civ. P. 54(c) and 55(b) because the demand in the complaint and the evidence provided by Plaintiff did not support the amount awarded in the Default Judgment. The Court's failure to follow Rules 54(c) and 55(b) provides a basis to grant a Rule 60(b) motion to set aside under Rule 60(b)(7), for "any other reason justifying relief from the operation of the judgment." Rule 60(b)(7) does not require a showing of excusable neglect. This alternative basis for setting aside the Default Judgment was properly set forth in Defendant's motion and memoranda in support of setting aside the default and default judgment.

Finally, the trial court erred by failing to follow its Default Judgment which provided for modification of the judgment upon later submission of evidence by the Defendant when it denied the Defendant an evidentiary hearing. The Default Judgment does not constitute a final order by it very terms. As such, it was error by the trial court for failing to grant the motion to set aside.

ARGUMENT

I. THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANTS' MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT.

Defendant's motion to set aside default and default judgment should have been granted by the Eighth Judicial District Court. As a result of this court's failure to grant Defendants' motion, Defendant has been injured by an the obligation to pay to Plaintiff the unsupportable amount specified in the default judgment without the recourse of an evidentiary hearing on damages. The amount as entered in the default judgment is grossly unjust as it is backed by deceptively speculated numbers that are unsupported by documentation and does not account for the Plaintiff's failure to pay any of its proportionate share of expenses and obligations. Even if Defendant is not entitled to have its motion to set aside default judgment granted, at a minimum, Defendant is entitled to an evidentiary hearing in order to calculate an amended judgment that is accurate, fair, and just.

A. Excusable Neglect Standard under Rule 60(b)

Relief from a judgment or an order is governed by Utah Rules of Civil Procedure Rule 60. Under subsection (b) of this rule, it states:

> On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ...The motion shall be made within a reasonable time and for reasons (1), ...not more than 90 days after the judgment, order, or proceeding was entered or taken.

Utah R. Civ. P. 60(b). As stated in the rule, a court may set aside a default judgment if the reason for the party's default was due to excusable neglect and if the defaulting party files its motion within a reasonable time after the judgment was entered. Additionally, the Supreme Court of Utah stated:

> In order for defendant to be relieved from the default judgment, he must not only show that the judgment was entered against him through excusable neglect (or any other reason specified in Rule 60(b)), but he must also show that his motion to set aside the judgment was timely, and that he has a meritorious defense to the action.

State ex rel. Utah State Dep't of Soc. Servs. v. Musselman, 667 P.2d 1053, 1055–56 (Utah 1983). (emphasis added). It follows that in order to bring a motion to set aside default judgment due to excusable neglect under Utah R. Civ. P. 60(b), the defaulting party must file the motion in a timely manor and the defaulting party must also show that he/she has a meritorious defense to the action.

When deciding whether or not to set aside a default judgment under a Utah R. Civ. P. 60(b) motion, the court has broad discretion. The Supreme Court of Utah emphasized this broad discretion stating, "We have repeatedly emphasized that district courts have "broad discretion" in deciding whether to set aside a judgment for excusable neglect under rule 60(b)," *Jones v. Layton/Okland*, 2009 UT 39, P17, 214 P.3d 859, 862, (Utah 2009). However, with this broad discretion in mind, courts should look unfavorably on default judgments, especially if the non-defaulting party is not prejudiced by the setting aside of the default motion. The Supreme Court of Utah stated:

> [T]he very reason for the existence of courts is to afford disputants an opportunity to be heard and to do justice between them. In conformity with that principle the courts generally tend to favor granting relief from default judgments where there is any reasonable excuse, unless it will result in substantial prejudice or injustice to the adverse party.

Westinghouse Elec. Supply Co. v. Paul W. Larsen Contractor, Inc., 544 P.2d 876, 879, (Utah 1975).

If a defaulting party wishes to appeal a lower court decision not to grant a motion to set aside default judgment, then the defaulting party must show that the lower court abused its discretion in order to have the lower court's decision reversed. In Larsen, the court stated, "A trial court has discretion in determining whether a movant has shown "mistake, inadvertence, surprise, or excusable neglect," and this Court will reverse the trial court's ruling only when there has been an abuse of discretion," *Larsen v. Collina*, 684 P.2d 52, 54 (Utah 1984).

Defendant should have been granted relief from the default and default judgment entered against it, due to excusable neglect. Under reason (1) of Utah R. Civ. P. 60(b), a party may be relieved of default judgment if the defaulting party can show excusable neglect. As established supra, courts have broad discretion in deciding whether or not to grant a motion to set aside default judgment on the grounds of excusable neglect; however, courts should allow parties a chance to be heard, and because of this, courts tend to grant a defaulting party's motions to set aside default judgment if a reasonable excuse exists and so long as it does not prejudice the non-defaulting party.

In this case, Defendant is able to show excusable neglect under the circumstances for a number of reasons. First, Defendant did not understand the nature of the claim against it. In 2009 Defendant engaged in negotiations with Plaintiff. (R. 325). From these negotiations, Defendant believed in good faith, that the Plaintiff had surrendered its rights to the well in dispute. (*Id.*). From the negations and communications with the Plaintiff, Defendant understood that the Plaintiff had ~~arraigned~~ arranged to walk away from his interests and obligations pertaining to Federal 1-33, the well in dispute, because Plaintiff believed the financial risks and obligations outweighed the potential for the well to earn profits. (R. 325-26). Defendant continued to believe that the Plaintiff had walked away from its interests and obligations in the well, because Plaintiff did not fulfill any of its obligations regarding the well including its share of maintenance fees and capping costs. (*Id.*). As Defendant did not have counsel at the time of the claim was filed, and because of the circumstances surrounding the Plaintiffs negotiations to walk away from its interests and obligations in the well and because the Plaintiff failed to fulfill any of its obligations to the well, Defendant did not understand that the claim was valid. (*Id.*).

Second, at the time Defendant was served with the claim, Defendant was negotiating the sale of his business to Diversified Energy Holdings, Inc. and American Money Managers. (*Id.*). As part of the negotiations of the sale of Defendant's business, the buyers were to address any liens or claims against the business. (*Id.*). Defendant was very active in his negotiations of the sale of his business and reasonably believed that one

of the potential buyers would assume responsibility for claims against the business, including the Plaintiff's claim. (*Id.*).

Defendant reasonably relied on Plaintiff's communication to walk away from its interest and obligations in the well and reasonably relied on negotiations with potential purchasers of his business to assume responsibility for the claims against the business. (*Id.*). Due to the fact that Defendant did not have legal representation at the time he was served with the complaint in this case and because of the circumstances surrounding the nature of the claim, Defendant misunderstood his obligations resulting in the default judgment. (*Id.*). In light of the circumstances surrounding this claim and because Defendant did not have legal representation, Defendant's actions should constitute excusable neglect; therefore, Defendant's motion to set aside the default should have been granted by the lower court.

B. Timeliness Standard under Rule 60(b)

Defendant's motion set aside the default based on excusable neglect was filed in a timely manner. Pursuant to Utah R. Civ. P. 60(b), a motion to set a default judgment must be filed within a reasonable time. This rule further specifies that if the motion is based on excusable neglect, the filing of the motion will be within a reasonable time if that motion is filed "no more than 90 days after the judgment …was entered." In this case, the Amended Default Judgment and Order was entered on January 12, 2015. Shortly thereafter, Defendant contacted an attorney in order to seek relief from this judgment. A motion under Utah R. Civ. P. 60(b) was filed on February 19, 2015. It follows the

Defendant's rule 60 motion was filed 38 days after the judgment was entered. The 38 days fell well within the time requirement laid out in Utah R. Civ. P. 60(b) and was therefore timely.

C. Meritorious Defense Standard

It is clear that Defendant meets the meritorious defense requirement. As discussed supra, in order for a court to grant relief from a default judgment, the defaulting party must show a meritorious defense. "Notwithstanding defendant's showing of timeliness and excusable neglect, unless he can show 'some defense of at least ostensible merit as would justify a trial of the issue thus raised,' his motion to set aside cannot justifiably be granted." *Musselman*, 667 P.2d at 1056. "A defense is sufficiently meritorious to have a default judgment set aside if it is entitled to be tried." *Erickson v. Schenkers Int'l Forwarders*, 882 P.2d 1147, 1149 (Utah 1994).

Defendant has a number of meritorious defenses to Plaintiff's claim. First, Defendant has a defense that a valid and enforceable contract was formed between the Plaintiff and himself and that this contract arranged for Plaintiff's "walking away" from its interests and obligations in the well. (R. 325-26). Defendant provided evidence in his affidavit that because of the risk that the well would not produce a profit, the Plaintiff elected to surrender its contractual interest rights in the well in exchange for the right to walk away from its contractual obligations in the well such as the maintenance costs and capping fees. (*Id.*). As a result of this new contract, the original operating agreement was no longer valid.

Additionally, assuming that original operating agreement was still in effect and enforceable between Defendant and the Plaintiff, Plaintiff's calculation of damages are grossly inflated. The Plaintiff's damage calculations are incorrect because Plaintiff calculated the damages based on the gross profits rather than the net profits of the well. Additionally, Plaintiff did not account for the fact the Plaintiff failed to pay any of its allotted portion of the costs of production of the oil that the well did produce.

D. Abuse of Discretion Standard

The court abused its discretion when it did not grant Defendant's motion to set aside default judgment. The court will only reverse the trial court's decision not to grant a defaulting party's motion to set aside default judgment if the trial court has abused it discretion, *Larsen*, 684 P.2d at 54.

The trial court abused its discretion when it failed to follow the Utah rules governing entry of judgment as argued in Section II hereinafter. Also, the trial court abused its discretion because the Ruling and Order entered by the trial court on May 7, 2015, (R. 513-517), and the Order, designated therein as a "final order", filed on May 25, 2015, (R. 522-523), were based on "erroneous findings of fact" and "flawed legal conclusions" and because the Default Judgment by it terms allows for the modification of the judgment upon later submission of evidence by the Defendant. (R. 116). *Menzies*, 150 P.3d at 501-502. In this regard, the Utah Supreme Court in *Menzies* stated the following:

> [A] district court's ruling on a motion to set aside a default judgment must be based on adequate findings of fact and on the law. We review a district court's findings of fact under a clear error standard of review. We review a district court's conclusions of law for correctness, affording the trial court no deference. If a district court's ruling on a 60(b) motion is based on clearly erroneous factual findings or flawed legal conclusions, the district court has likely abused its discretion.

The Ruling and Order (R. 513-517) erroneously concluded that Rule 55(b) does not require the Court to hold an evidentiary hearing under the circumstances of this case. As argued in Sections II and III hereinafter, the trial court was clearly in error in denying the evidentiary hearing and therefore abused its discretion in denying the motion to set aside.

II. THE JUDGMENT SHOULD BE REVERSED BECAUSE THE TRIAL COURT FAILED TO FOLLOW Utah R. Civ. P. 54(c)(2) and 55(b)(2) AND THUS ACTED OUTSIDE ITS AUTHORITY WHEN IT ENTERED DEFAULT JUDGMENT UNSUPPORTED BY EVIDENCE IN THE RECORD.

In the case at hand, the Plaintiff filed its complaint asking for an order that the Defendant "provide an accounting of all production and income . . .." (R.6). Plaintiff also asked in its complaint that the Court "Enter Judgment in favor of the Plaintiff for all amounts found owing . . .. *Id.* Plaintiff also attached a copy of the A.A.P.L. Form 610-1989 Model Form Operating Agreement dated January 15, 2001, (the "Operating Agreement"), as an attachment to the complaint in support of Plaintiff's demands and claims to liability. (R.7-36). In the Operating Agreement, it states, "Each party shall be responsible only for its obligations, and shall be liable only for its proportionate share of the costs of developing and operating the Contract Area." (R.21, line 65-66). The

Operating Agreement also states, "Operator shall promptly pay and discharge expenses incurred in the development and operation of the Contract Area pursuant to the agreement and shall charge each of the parties hereto with their respective proportionate shares upon the expense basis provided in Exhibit 'C.'" (R.14, line 67-69). The Operating Agreement further states,

> Operator shall hold for the account of the Non-Operators any funds of the Non-Operators advanced or paid to the Operator, either for the conduct of operations hereunder or as a result of the sale of production from the Contract Area, and such funds shall remain the funds of the Non-Operators on whose account they are advanced or paid until used for their intended purpose or otherwise delivered to the Non-Operators or applied toward the payment of debts as provided in Article VII.B.

(R.15, line 3-7).

The Plaintiff's complaint alleges that the Defendant is the operator under the Operating Agreement. (R.2). Yet in Plaintiff's affidavit provided to the Court as evidence supporting the default judgment in the amount of $465,628.00, the math therein stated, despite known volatility of energy markets, takes one price per barrel of oil ($75.00) and one price per MCF of natural gas ($4.00) and applies them to alleged production figures spanning more than a decade. (R.90-91). This is clearly a very stretched estimate which does not consider what portion of production was actually sold into the market and what dates and for what price the sales were actually made. (R.328-329). Also, despite the stretch in estimating gross revenue, the affidavit makes no effort to estimate production costs, of which the parties to the Operating Agreement must share proportionate to their interests. (R.90-91).

X
Counter or separate claim?

These faults are readily seen from a review of the complaint and its attachment (the Operating Agreement) and the affidavit supporting the Default Judgment. Indeed, the complaint with its attachment and the affidavit was all the evidence the Court looked at in support of the $465,628.00 Default Judgment.

It is also important to note that Defendant's Memorandum in Support of Motion to Set Aside Default and Default Judgment provided to the Court detail of public information that Plaintiff could have provided to come to a more realistic estimate of gross revenue (R.328-329). Yet, after that clear error was brought to the Court's attention, the Court refused to allow an evidentiary hearing on that issue. (R.516). It is also important to note that Plaintiff did not dispute the information provided by the Defendant in its Memorandum in Support of Motion to Set Aside showing how a more realistic measure of gross revenues could be achieved from public information, but maintained the only issue the court should consider is the question of excusable neglect. (R.451-458). Apparently, the Court, having determined that there was no excusable neglect, decided that Defendant was not entitled to an evidentiary on damages.

According to Utah case law, a default judgment must be overturned when trial court fails to follow Utah R. Civ. P. 54(c) and 55(b). In *Russell*, 681 P.2d at 1195, the Utah Supreme Court stated as follows:

> [T]he judgment . . . must be reversed because of the failure of the trial court to follow Rule 55(b)(2) of the Utah Rules of Civil Procedure. Rule 54(c)(2) and Rule 55 prescribes the procedure to be followed by trial courts in entering judgments against defaulting parties. Courts are not at liberty to deviate from those rules just because one party is in default and is not entitled to be heard on the merits of the case. For example, Rule 54(c)(2)

> provides that **a judgment by default may not be different in kind from or exceed in amount that specifically prayed for in the demand for judgment**. See *Hayes v. Towles*, 95 Idaho 208, 506 P.2d 105 (1973). Another rule governing the entry of default judgments is Rule 55(b)(2), which is applicable in the instant case. It provides that when the plaintiff's claim is for other than a sum certain or an amount that by computation can be made certain judgment by default may not be entered by the clerk of the court, but must be entered by the court, which may conduct such hearings and take such evidence as is necessary to determine the damages.
> . . .
>
> [T]he plaintiffs' claims for damages against Mills were not for sums certain and under Rule 55(b)(2) **a hearing should have been conducted by the trial court to ascertain the amount of the damages to which the plaintiffs were entitled.**

(emphasis added).

In *Katz*, 732 P.2d at 95, the Court states, "We have consistently reversed default judgments when the amount of damages awarded exceeds the amount of the prayer of the complaint or is unsupported by evidence in the record."

Also, a claim that a default judgment was not properly entered under Utah R. Civ. P. 54(c) and 55(b) may be brought through direct appeal on the default judgment or by post-judgment motion under Rule 60(b), as Defendant has done in this case. See *Wisan v. City of Hildale*, 330 P.3d 76, 81 (Utah 2014). And, a defendant may file an independent action as another option to overturn a default judgment that was improperly entered. See *Oliphant v. Estate of Brunetti*, 64 P.3d 587 (Utah App. 2002).

Finally, a Rule 60(b) motion to set aside a default judgment on the basis that the trial court did not follow Rules 54 and 55 in awarding the default judgment may be considered under Rule 60(b)(7), as "any other reason justifying relief from the operation

of the judgment." See *Sixteen Thousand Dollars U.S. Currency*, 914 P.2d at 1178. With all of the emphasis Defendant placed on the court's failure to follow Rules 54(c) and 55(b) in its motion and memoranda in support of setting aside the default judgment (R.337, 479-480), it is clear that Rule 60(b)(7) was presented as an alternative basis to set aside. There is no need to show excusable neglect under Rule 60(b)(7) and the trial court should have made findings to that effect in its May 7, 2015, Ruling and Order.

In the case at hand, the Default Judgment should be reversed and remanded for evidentiary hearing on the damages issue. Furthermore, under *Sixteen Thousand Dollars U.S. Currency*, the Court may fully set aside the Default Judgment under Rule 60(b)(7), without the need of Defendant showing excusable neglect based solely on the Court's failure to follow Rules 54 and 55.

III. THE TRIAL COURT ERRED WHEN IT ENTERED A RULING AND FINAL ORDER ON DEFENDANTS' MOTION TO SET ASIDE A DEFAULT JUDGMENT WHEREIN THE COURT DENIED DEFENDANTS' REQUEST FOR AN EVIDENTIARY HEARING IN LIGHT OF THE DEFAULT JUDGMENT WHICH ALLOWS FOR AMENDMENT OF THE JUDGMENT UPON SUBMISSION OF ADDITIONAL EVIDENCE.

On January 12, 2015, the Court entered its Amended Default Judgment against Defendant in the amount of $465,628.00 wherein the Court ordered Defendant to provide accounting to the Plaintiff and provided that the judgment may be amended based on the accounting. (R.115-118). In this regard, the Amended Default Judgment states, "Defendants are ordered to provide an accounting to Plaintiff as required by the operating agreement during the time period the Defendants were operating the well. **The judgment**

entered herein may be amended based on the information provided in that accounting." (R.116). (emphasis added).

On February 20, 2015, the Defendant filed a Motion to Set Aside Default and Default Judgment. (R.147-149). Defendant, in its Memorandum in Support of Motion to Set Aside Default and Default Judgment, asked the Court, in the alternative to setting aside the Default, to grant a hearing on the damages issue. (R.337). Following further briefing on Defendant's Motion to Set Aside, the Court entered a Ruling and Order on May 7, 2015, (R.513-517), wherein the Court, after quoting in part Utah R. Civ. P. 55(b)(2), stated,

> The Rule does not require an evidentiary hearing. The Court accepted the sworn affidavit of Joe Glennon concerning the amount of damages. Therefore, an evidentiary hearing on the amount of damages is unnecessary. Furthermore, the Defendant received the affidavit and Proposed Default Judgment for review prior to the entry of judgment and did not object. The Court denies the Defendant's request for an evidentiary hearing.

In the Court's Order entered on May 25, 2015, (R.522-523), the Court stated,

> The Court entered its Ruling and Order on May 6, 2015. Based on the Court's Ruling and Order of May 6, 2015 and the reasons set forth therein, it is hereby Ordered that the Defendants's Motion to Set Aside Default and Default Judgment is denied. This is a final Order in this matter.

(R.516).

Based on the above, the Defendant can unequivocally conclude that the Court will not take any evidence or grant any further hearings which would allow for the modification of the $465,628.00 judgment. In this regard, this case is much like the case of *Pitts v. Pine Meadow Ranch, Inc.* In *Pitts*, the trial court, prior to entering a default

judgment, stated on the record, "That's too much money. Well, if they respond to a judgment of this size, if they are faced with a collection problem maybe they will respond. Well, its clear back in April. I will give you the prayer of your Complaint, $36,000." *Id.*, 589 P.2d at 769. To that comment by the trial judge, the Utah Supreme Court stated,

> It is clear that the Court did not weigh the evidence or think that the damages amounted to $36,000, but entered judgment in that amount because the defendants had been dilatory and he thought a large judgment would bring them into Court, and that when the defendants did respond to that judgment, the Court refused to overturn it because at that time to do so would be an injustice to the plaintiff.

Id. The Court in *Pitts* then remanded the case to the trial court for further proceedings on the issue of damages. *Id.* at 770.

In this case, it is not clear why the trial court did not allow an evidentiary hearing when it had stated that the judgment may be amended upon proof of damages. Indeed, the Defendant stated to the Court in his Declaration and Memorandum in Support of Motion to Set Aside that he was is in the process of gathering payment details for 2002 through 2011 in order to provide the Court with accurate revenue for the entire relevant time period. (R. 329). The Court's statement in its Amended Default Judgment allowing the Judgment to be modified upon presentation of evidence shows clearly that the Court did not believe the $465,628.00 judgment amount was accurate and shows that the Amended Default Judgment was not a final order under Utah R. Civ. P. 55(b)(2), because it does not adjudicate "all the claims and the rights and liabilities of all the parties." *Id.* This is consistent with the case of *Bradbury v. Valencia*, 5 P.3d 649 (Utah 2000). In

Bradbury, the Utah Supreme Court stated:

> For an order or judgment to be final, it must dispose of the case as *to all the parties*, and finally dispose of the subject-matter of the litigation on the merits of the case. In other words, a judgment is final when it ends the controversy between the parties litigant. . . .
>
> To be final, the trial court's order or judgment must dispose of all parties and claims to an action. Recently we held that a trial court must even determine attorney fee awards before a judgment is final.

Id. at 651. (citations and internal quotation marks omitted).

Based on the facts of this case, under the *Pitts* and *Bradbury* cases, the Court of Appeals should at a minimum set aside the Default Judgment and remand the case back to the District Court for further proceedings on the issue of damages.

CONCLUSION

For the foregoing reasons, Defendant respectfully asserts that the Ruling and Order dated May 7, 2015, and the Order dated May 25, 2015, should be reversed, and the Defaults entered on October 31, 2014, and the Amended Default Judgment dated January 12, 2015, should be set aside.

Dated this 27 day of January, 2016.

SAM & REYNOLDS, P.C.

Daniel S. Sam
Counsel for Defendants/Appellants

CERTIFICATE OF COMPLIANCE

I, Daniel S. Sam, certify that this brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 8,386 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B). This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Word Perfect 11 in font size 13 and style Times New Roman.

DATED this 22 day of January, 2016.

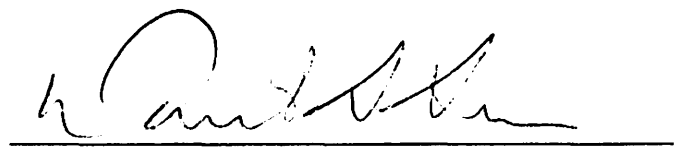
SAM & REYNOLDS, P.C.

Daniel S. Sam
Attorney for Defendants/Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two (2) true and correct copies of the foregoing BRIEF OF APPELLANT were served by U.S. Mail on January 22, 2016, as follows:

ALLRED, BROTHERSON &
HARRINGTON, P.C.
Clark B. Allred
148 S. Vernal Ave, Suite 101
Vernal, Utah 84078
(435) 789-7800



ADDENDUM

A. Ruling and Order dated May 5, 2015
B. Order dated May 25, 2015
C. Amended Default Judgment and Order dated January 12, 2015
D. Complaint dated October 7, 2014, including attachments
E. Amended Affidavit of Joe Glennon dated December 8, 2014, including attachments

ADDENDUM "A"

Ruling and Order dated May 5, 2015

IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR UINTAH COUNTY, STATE OF UTAH

Retamco Operating, Inc., Plaintiff, vs. David Swett and Alberta Gas Company, Defendant.	RULING AND ORDER Case No. 140800129 Judge EDWIN T. PETERSON

This matter is before the Court on the Defendant David Swett's Motion to Set Aside Default Judgment.

The Defendant requests that the default judgment entered against him be set aside pursuant to Rule 60(b)(1) based on excusable neglect. Alternatively, the Defendant requests an evidentiary hearing on the amount damages the Plaintiff is entitled to.

Rule 60(b) of the Utah Rules of Civil Procedure provides in part:

> On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

"A district court has broad discretion to rule on a motion to set aside a default judgment under Rule 60(b) of the Utah Rules of Civil Procedure." *Menzies v. Galetka*, 2006 UT 81, ¶ 54, 150 P.3d 480. The party seeking to set aside the default judgment "must show that he used due diligence and that he was prevented from appearing by circumstances over which he had no

control." *Heath v. Mower*, 597 P.2d 855, 858 (Utah 1979). "In determining whether a party has exercised due diligence, the trial court must consider whether the actions of the party seeking relief were 'sufficiently diligent and responsible, in light of the attendant circumstances, to justify excusing it from the full consequences of its neglect.'" *Shamrock Plumbing, LLC, v. Silver Baron Partners, LC*, 277 P.3d 649, 651 (Utah App. 2012); quoting *Jones v. Layton/Okland*, 214 p.3d 859, 864 (Utah 2009).

The Defendant argues he did not respond to the Complaint because he believed the Plaintiff's claim was invalid. The Defendant contends he believed the Plaintiff no longer had an interest in the well based on a conversation held in 2009. Second, the Defendant argues that he did not respond because he believed the potential purchasers of the well would deal with the Complaint. The Defendant argues his actions, and the circumstances surrounding the lawsuit, supports a showing of excusable neglect.

Before filing this lawsuit, counsel for the Plaintiff sent five letters to the Defendant dating from June 28, 2013, to July 22, 2014. The letters concerned the issue of royalties and the working interest amounts owed to the Plaintiff from the well. The Defendant spoke with counsel on the phone concerning the payments and claims he believed there was an understanding concerning the Plaintiff's claim for payment. Counsel for Plaintiff agrees Defendant spoke to him once on July 2, 2013, but alleges that the Defendant merely stated he would speak to Joe Glennon personally. No further response was received from the Defendant, and no response was received concerning the additional letters. The Defendant was served personally with the Summons and Complaint on October 9, 2014. He did not respond and his default was entered on October 31, 2014. A Motion for Default Judgment was sent to the Defendant on December 16,

2014. The Defendant did not respond and a Notice to Submit for Decision was filed on December 30, 2014. An Amended Affidavit and a Proposed Default Judgment were sent to the Defendant on January 12, 2015. The Defendant did not respond. A Notice of Entry of Judgment was sent to the Defendant on January 21, 2015. The Defendant's first response to this lawsuit was made February 20, 2015, with the filing of his Motion to Set Aside Default Judgment.

The Court finds that the Defendant failed to act to the lawsuit with due diligence. Even if Defendant believed Plaintiff had waived its interest in the well in 2009, and believed there was an understanding concerning the payments after the July 2, 2012, phone call, it was unreasonable to assume Plaintiff was foregoing their claims after receiving three additional letters from counsel concerning the payments, and after receiving a Summons and Complaint. Clearly, the Defendant should have realized the Plaintiff was pursuing the claim to the payments at least the point in time in which he was served the Summons and Complaint. Defendant's failure to act on the Summons and Complaint was not diligent or responsible. Furthermore, the Defendant's belief that a nonparty, potential purchaser of the well, would deal with the lawsuit is unreasonable. Even if it was reasonable to believe the potential purchaser would resolve the lawsuit, it was not reasonable to continue that belief after the Defendant received notice of his default and the Motion for Default Judgment. The Court finds that the Defendant was aware of the claims, and the lawsuit and chose not to respond. Consequently, the Defendant has not shown that his non-response was due to excusable neglect.

Alternatively, the Defendant argues the Court is required to hold an evidentiary hearing concerning the amount of damages pursuant to Rule 55(b)(2) of the Utah Rules of Civil Procedure. Rule 55(b)(2) states in part:

> If, in order to enable the court to enter judgment . . . it is necessary to take an account or to determine the amount of damages . . . the court may conduct such hearings or order such references as it deems necessary and proper.

The Rule does not require an evidentiary hearing. The Court accepted the sworn affidavit of Joe Glennon concerning the amount of damages. Therefore, an evidentiary hearing on the amount of damages is unnecessary. Furthermore, the Defendant received the affidavit and Proposed Default Judgment for review prior to the entry of judgment and did not object. The Court denies the Defendant's request for an evidentiary hearing.

The Defendant's Motion to Set Aside Default Judgment is denied.

Dated this 6 day of May, 2015.

BY THE COURT:

EDWIN T. PETERSON, District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 140800129 by the method and on the date specified.

MAIL: CLARK B ALLRED 148 S VERNAL AVE STE 101 VERNAL, UT 84078
MAIL: ANDREW R HALE 50 W BROADWAY STE 700 SALT LAKE CITY UT 84101

Date: 05/07/2015 /s/ BRIAN LITTON

Deputy Court Clerk

ADDENDUM "B"

Order dated May 25, 2015

The Order of Court is stated below:
Dated: May 25, 2015 04:11:37 PM
/s/ EDWIN T PETERSON
District Court Judge

CLARK B ALLRED - 0055
MICHAEL D. HARRINGTON - 12540
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IN THE EIGHTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY

STATE OF UTAH

RETAMCO OPERATING, INC., Plaintiff, vs. DAVID SWETT and ALBERTA GAS COMPANY, Defendants.	ORDER Case No.: 140800129 Judge: Edwin T. Peterson

The above case came before the Court on the Defendants' Motion to Set Aside Default and Default Judgment. The parties have submitted memoranda and declarations and submitted the motion to the Court for ruling. The Court entered its Ruling and Order on May 6, 2015. Based on the Court's Ruling and Order of May 6, 2015 and the reasons set forth therein, it is hereby Ordered that the Defendants's Motion to Set Aside Default and Default Judgment is denied. This is a final Order in this matter.

Signed and dated as of the date indicated by the official seal and

electronic signature of the Court located on the first page of this document.

MAILING CERTIFICATE

Debbie Reed, legal assistant of Allred, Brotherson & Harrington, P.C., attorneys for Plaintiff, certifies that she served the attached ORDER upon Counsel for Defendants by U.S. Mail and via email to:

Steven W. Dougherty
John A. Bluth
Andrew R. Hale
ANDERSON & KARRENBERG
50 W. Broadway, Ste. 700
Salt Lake City, UT 84101

Steven W. Dougherty
sdougherty@aklawfirm.com
John A. Bluth
jbluth@aklawfirm.com
Andrew R. Hale
ahale@aklawfirm.com
on the 13th day of May, 2015.

/s/Debbie Reed
Debbie Reed

ADDENDUM "C"

Amended Default Judgment and Order dated January 12, 2015

CLARK B ALLRED - 0055
MICHAEL D. HARRINGTON - 12540
ALLRED, BROTHERSON & HARRINGTON, P.C.
Attorneys for Plaintiff
148 South Vernal Ave. Suite 101
Vernal, Utah 84078
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IN THE EIGHTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY

STATE OF UTAH

RETAMCO OPERATING, INC., Plaintiff, vs. DAVID SWETT and ALBERTA GAS COMPANY, Defendants.	AMENDED DEFAULT JUDGMENT and ORDER (Tier 2 Case) Case No.: 140800129 Judge: Edwin T. Peterson

The above case came before the Court on the Plaintiff's Motion to Enter a Default Judgment. The Defendants were both personally served and failed to respond to the Complaint. The Defendants' defaults have been entered. The Plaintiff's Motion was supported by the Affidavit of Joe Glennon the vice president-lands of Plaintiff, Retamco Operating Inc.

Based on the facts set forth in the Affidavit, the Operating Agreement attached to the Complaint, the relief

requested in the Complaint, to which the Defendants failed to respond, the Court grants the Plaintiff's motion and

Orders, Adjudges and Decrees that:

1. Plaintiff is awarded judgment against the Defendants in the amount of $465,628.00.

2. Defendant Alberta Gas Company appears to be insolvent, has let its corporate status expire and has failed to account for its performance as operator or to pay monies owed as required by the operating agreement. There is good cause to remove Defendant, Alberta Gas Company, as operator. Therefore based on the terms of the Operating Agreement, Defendant, Alberta Gas Company is removed as the operator of the Federal 1-33 well located in Section 33, Township 5 South, Range 19 East in Uintah County Utah, effective immediately.

3. Defendants are ordered to provide an accounting to Plaintiff as required by the operating agreement during the time period the Defendants were operating the well. The judgment entered herein may be amended based on the information provided in that accounting.

4. The Operating Agreement grants to the Plaintiff a security interest to secure the payment and performance of

Defendant, Alberta Gas Company under the operating agreement which security interest is secured by Alberta Gas Company's interest in the subject well (Federal 1-33) and leases. The leases involved in this well are Federal Lease UTU 3575 (561.66 gross acres), a State of Utah lease ML 46685 (7.82 acres), fee leases (616.52 acres) and additional HBP lands. The communitized area which relates to the Gusher Federal 1-33 Well is all of Sections 32 and 33 in Township 5 South Range 19 East SLM and all of Section 5 in Township 2 South Range 2 East USM being a total acreage of 608.73 acres.

The security interest in the well and leases as set forth above is to be foreclosed and the interest of Alberta Gas Company in the Federal 1-33 well and the above leases is to be sold pursuant to the terms of the Utah Commercial Code with the proceeds applied to the costs of sale and then to the amounts owing to Plaintiff as set forth in the judgment entered herein. Plaintiff may bid at the sale and offer a credit bid based on its judgment. *Signed and dated as of the date indicated by the official seal and electronic signature of the Court located on the first page of this document.*

MAILING CERTIFICATE

Debbie Reed, legal assistant of Allred, Brotherson & Harrington, P.C., attorneys for Plaintiff, certifies that she served the attached DEFAULT JUDGMENT AND ORDER upon Defendants by placing a true and correct copy in an envelope addressed to:

David Swett, Agent or DBA of Alberta Gas Company
933 E. 2000 N.
Vernal, Utah 84078

David Swett
933 E. 2000 N.
Vernal, Utah 84078

and deposited the same, sealed, with first class postage prepaid thereon, in the United States Mail at Vernal, Utah, on the 12th day of January, 2015.

/s/Debbie Reed
Debbie Reed

ADDENDUM "D"

Complaint dated October 7, 2014, including attachments

CLARK B ALLRED - 0055
MICHAEL D. HARRINGTON - 12540
ALLRED, BROTHERSON & HARRINGTON, P.C.
Attorneys for Plaintiff
148 South Vernal Ave. Suite 101
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Telephone: (435) 789-7800

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY

STATE OF UTAH

RETAMCO OPERATING, INC., Plaintiff, vs. DAVID SWETT and ALBERTA GAS COMPANY, Defendants.	COMPLAINT (Tier 2 Case) Case No.: Judge:

Plaintiff, for causes of action against the Defendants, David Swett and Alberta Gas Company, alleges as follows:

1. Defendant David Swett is a resident of Uintah County, Utah. Defendant Alberta Gas Company was a Utah corporation doing business in Uintah County, Utah, which corporation status expired in 2009.

2. The causes of action arise out of and involve the operation of an oil and gas well, known as Federal 1-33 located Section 33, Township 5 South Range 19 East in Uintah County, Utah.

3. Plaintiff owns both an overriding royalty interest and a working interest in Federal 1-33.

4. Defendant Alberta Gas Company was and remains the operator of the well.

5. Defendant Alberta Gas Company was solely owned by Defendant David Swett. Alberta Gas Company status as a corporation expired in 2009 for failure to file annual reports.

6. Defendant David Swett has continued to operate the well since the expiration of Alberta Gas Company's corporate status using the dba of Albert Gas Company.

7. Defendant, Swett, as the sole shareholder of Defendant Alberta Gas Company, upon its expiration of a corporation, became the holder of its assets, including the well in question and the monies derived therefrom and to the extent of the assets received is liable for the debts of Alberta Gas Company. Utah Code Ann. §16-10a-1408.

8. Defendants operated the Federal 1-33 well pursuant to the terms of an Operating Agreement dated January 15, 2001, a copy of which is attached hereto and incorporated herein.

9. Defendants have breached the terms of the Operating Agreement and also the law by failing to account to the Plaintiff and pay to the Plaintiff the royalties and other income owed to the Plaintiff for the production from the Federal 1-33 well.

FIRST CAUSE OF ACTION

(Breach of Contract)

10. Plaintiff, in this First Cause of Action, incorporates its allegations in paragraphs 1 thru 9.

11. Defendants had a contractual, statutory and legal duty to account to the Plaintiff for all production from the Federal 1-33 well, for all income received and to pay to the Plaintiff the royalties and other income owed to the Plaintiff based on its interest in the well.

12. Defendants have failed and refused to provide any accounting, have failed to respond to any requests for accounting and have failed to pay to the Plaintiff the monies owed to the Plaintiff.

13. Plaintiff is entitled to an accounting for all production and income from Federal 1-33 from the date the Defendants became the operator and a judgment for all monies owed to Plaintiff.

SECOND CAUSE OF ACTION

(Removal of Operator)

14. Plaintiff, in this Second Cause of Action, incorporates its allegations in paragraphs 1 thru 9.

15. Article V(A)1 of the Operating Agreement provides that the operator may be remove for good cause.

16. Article V(A)3 provides that the operator should be

removed in the event the operator is insolvent.

17. Defendants, as the operator, have failed to account for and pay monies owed and Defendant Alberta Gas's corporate status has expired and said Defendant may be insolvent.

18. Failure to account for and pay monies owed is good cause to remove the Defendants as the operator.

19. Plaintiff requests that the court remove the Defendants as the operator of Federal 1-33.

THIRD CAUSE OF ACTION

(Foreclosure of Lien and Sale of Defendants' Interest)

20. Plaintiff, in this Third Cause of Action, incorporates its allegations in paragraphs 1 thru 9.

21. Defendants in Article VII(B) of the Operating Agreement granted a security interest in its interests, including but not limited to the Oil and Gas Leases, the Oil and Gas Interests, leasehold interests, working interests, royalty interests, operating rights, the well, the equipment and personal property and fixtures to secure performance of its obligations under the Agreement.

22. Plaintiff, pursuant to the terms of the Operating Agreement, has the rights of a secured party under the Utah Commercial Code.

23. Plaintiff requests that the court enter a judgment for

the amounts owed, that the court then direct the sale of all the interests of the Defendants, including but not limited to the Oil and Gas Leases, the Oil and Gas Interests, leasehold interests, working interests, royalty interests, operating rights, the well, the equipment and personal property and fixtures, that the amount received be applied to the costs of the sale including legal fees, then to amounts owed to Plaintiff and that a deficiency judgment enter for any amounts remaining owing.

FOURTH CAUSE OF ACTION

(Fees and Costs)

24. Plaintiff, in this Fourth Cause of Action, incorporates its allegations in paragraphs 1 thru 9.

25. Article VII(D)5 of the Operating Agreement provides that "In the event any party is required to bring legal proceedings to enforce any financial obligation of a party hereunder, the prevailing party in such action shall be entitled to recover all court costs, costs of collection and a reasonable attorney's fee, which the lien provide for herein shall also secure".

26. Defendants have ignored the Plaintiff's requests for an accounting and payment.

27. Plaintiff has been required to file this lawsuit to enforce the financial obligations owed by the Defendants and to remove the Defendants as the operator.

28. Plaintiff is entitled to recover all costs and attorney's fees incurred and to have those costs and fees as a lien on the Defendants' interests in the leases and well.

Wherefore it is requested that the court:

1. Order the Defendants to provide an accounting of all production and income from the Federal 1-33 well.

2. Enter judgment in favor of the Plaintiff for all amounts found owing together with interest.

3. Remove the Defendants as operator.

4. Foreclose the lien on the Defendants' interest in the well and leases to pay the costs of the sale and to pay the amounts owed to the Plaintiff including attorney's fees and costs.

5. Award the Plaintiff all fees and costs it incurs, including fees and costs incurred for collection efforts and to order that those amounts owed are a lien on the interests of the Defendants.

6. For such other relief as the court deems appropriate.

Plaintiff believes this to be a Tier 2 case.

Dated this 7th day of October, 2014.

ALLRED, BROTHERSON & HARRINGTON, P.C.
Attorneys for Plaintiff

/s/Clark B Allred
Clark B Allred

/s/Michael D. Harrington
Michael D. Harrington

ATTACHMENT

(Operating Agreement dated January 15, 2001)

A.A.P.L. FORM 610 - 1989

MODEL FORM OPERATING AGREEMENT

OPERATING AGREEMENT

DATED

January . 15 . 2001

OPERATOR CDX GAS, LLC

CONTRACT AREA Gusher Prospect

COUNTY OR PARISH OF Uintah . STATE OF Utah

A.A.P.L. FORM 610 - MODEL FORM OPERATING AGREEMENT - 1989

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Gusher
of Texas

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A.A.P.L. FORM 610 - MODEL FORM OPERATING AGREEMENT - 1989

OPERATING AGREEMENT

THIS AGREEMENT, entered into by and between CDX GAS, LLC hereinafter designated and referred to as "Operator," and the signatory party or parties other than Operator, sometimes hereinafter referred to individually as "Non-Operator," and collectively as "Non-Operators."

WITNESSETH:

WHEREAS, the parties to this agreement are owners of Oil and Gas Leases and/or Oil and Gas Interests in the land identified in Exhibit "A," and the parties hereto have reached an agreement to explore and develop these Leases and/or Oil and Gas Interests for the production of Oil and Gas to the extent and as hereinafter provided.

NOW, THEREFORE, it is agreed as follows:

ARTICLE I.
DEFINITIONS

As used in this agreement, the following words and terms shall have the meanings here ascribed to them:

A. The term "AFE" shall mean an Authority for Expenditure prepared by a party to this agreement for the purpose of estimating the costs to be incurred in conducting an operation hereunder.

B. The term "Completion" or "Complete" shall mean a single operation intended to complete a well as a producer of Oil and Gas in one or more Zones, including, but not limited to, the setting of production casing, perforating, well stimulation and production testing conducted in such operation.

C. The term "Contract Area" shall mean all of the lands, Oil and Gas Leases and/or Oil and Gas Interests intended to be developed and operated for Oil and Gas purposes under this agreement. Such lands, Oil and Gas Leases and Oil and Gas Interests are described in Exhibit "A."

D. The term "Deepen" shall mean a single operation whereby a well is drilled to an objective Zone below the deepest Zone in which the well was previously drilled, or below the Deepest Zone proposed in the associated AFE, whichever is the lesser.

E. The terms "Drilling Party" and "Consenting Party" shall mean a party who agrees to join in and pay its share of the cost of any operation conducted under the provisions of this agreement.

F. The term "Drilling Unit" shall mean the area fixed for the drilling of one well by order or rule of any state or federal body having authority. If a Drilling Unit is not fixed by any such rule or order, a Drilling Unit shall be the drilling unit as established by the pattern of drilling in the Contract Area unless fixed by express agreement of the Drilling Parties.

G. The term "Drillsite" shall mean the Oil and Gas Lease or Oil and Gas Interest on which a proposed well is to be located.

H. The term "Initial Well" shall mean the well required to be drilled by the parties hereto as provided in Article VI.A.

I. The term "Non-Consent Well" shall mean a well in which less than all parties have conducted an operation as provided in Article VI.B.2.

J. The terms "Non-Drilling Party" and "Non-Consenting Party" shall mean a party who elects not to participate in a proposed operation.

K. The term "Oil and Gas" shall mean oil, gas, casinghead gas, gas condensate, and/or all other liquid or gaseous hydrocarbons and other marketable substances produced therewith, unless an intent to limit the inclusiveness of this term is specifically stated.

L. The term "Oil and Gas Interests" or "Interests" shall mean unleased fee and mineral interests in Oil and Gas in tracts of land lying within the Contract Area which are owned by parties to this agreement.

M. The terms "Oil and Gas Lease," "Lease" and "Leasehold" shall mean the oil and gas leases or interests therein covering tracts of land lying within the Contract Area which are owned by the parties to this agreement.

N. The term "Plug Back" shall mean a single operation whereby a deeper Zone is abandoned in order to attempt a Completion in a shallower Zone.

O. The term "Recompletion" or "Recomplete" shall mean an operation whereby a Completion in one Zone is abandoned in order to attempt a Completion in a different Zone within the existing wellbore.

P. The term "Rework" shall mean an operation conducted in the wellbore of a well after it is Completed to secure, restore, or improve production in a Zone which is currently open to production in the wellbore. Such operations include, but are not limited to, well stimulation operations but exclude any routine repair or maintenance work or drilling, Sidetracking, Deepening, Completing, Recompleting, or Plugging Back of a well.

Q. The term "Sidetrack" shall mean the directional control and intentional deviation of a well from vertical so as to change the bottom hole location unless done to straighten the hole or drill around junk in the hole to overcome other mechanical difficulties.

R. The term "Zone" shall mean a stratum of earth containing or thought to contain a common accumulation of Oil and Gas separately producible from any other common accumulation of Oil and Gas.

Unless the context otherwise clearly indicates, words used in the singular include the plural, the word "person" includes natural and artificial persons, the plural includes the singular, and any gender includes the masculine, feminine, and neuter.

ARTICLE II.
EXHIBITS

The following exhibits, as indicated below and attached hereto, are incorporated in and made a part hereof:

X A. Exhibit "A," shall include the following information:
(1) Description of lands subject to this agreement,
(2) Restrictions, if any, as to depths, formations or substances,
(3) Parties to agreement with addresses for notice purposes,
(4) Percentage or fraction of interests of parties to this agreement,
(5) Oil and Gas Leases and/or Oil and Gas Interests subject to this agreement,
(6) Burdens on production.

___ B. Exhibit "B," Form of Lease.

X C. Exhibit "C," Accounting Procedure.

___ D. Exhibit "D," Insurance.

___ E. Exhibit "E," Gas Balancing Agreement.

___ F. Exhibit "F," Non-Discrimination and Certification of Non-Segregated Facilities.

X G. Exhibit "G," Tax Partnership.

___ H. Other

If any provision of any exhibit, except Exhibits "E," "F" and "G," is inconsistent with any provision contained in the body of this agreement, the provisions in the body of this agreement shall prevail.

ARTICLE III.
INTERESTS OF PARTIES

A. Oil and Gas Interests:

If any party owns an Oil and Gas interest in the Contract Area, that interest shall be treated for all purposes of this agreement and during the term hereof as if it were covered by the form of Oil and Gas Lease attached hereto as Exhibit "B," and the owner thereof shall be deemed to own both royalty interest in such lease and the interest of the lessee thereunder.

B. Interests of Parties in Costs and Production:

Unless changed by other provisions, all costs and liabilities incurred in operations under this agreement shall be borne and paid, and all equipment and materials acquired in operations on the Contract Area shall be owned, by the parties as their interests are set forth in Exhibit "A." In the same manner, the parties shall also own all production of Oil and Gas from the Contract Area subject, however, to the payment of royalties and other burdens on production as described hereafter.

~~Regardless of which party has contributed any Oil and Gas Lease or Oil and Gas Interest on which royalty or other~~ burdens may be payable and except as otherwise expressly provided in this agreement, each party shall pay or deliver, or cause to be paid or delivered, all burdens on its share of the production from the Contract Area up to, but not in excess of, _____ and shall indemnify, defend and hold the other parties free from any liability therefor. Except as otherwise expressly provided in this agreement, if any party has contributed hereto any Lease or Interest which is burdened with any royalty, overriding royalty, production payment or other burden on production in excess of the amounts stipulated above, such party so burdened shall assume and alone bear all such excess obligations and shall indemnify, defend and hold the other parties hereto harmless from any and all claims attributable to such excess burden. However, so long as the Drilling Unit for the productive Zone(s) is identical with the Contract Area, each party shall pay or deliver, or cause to be paid or delivered, all burdens on production from the Contract Area due under the terms of the Oil and Gas Lease(s) which such party has contributed to this agreement, and shall indemnify, defend and hold the other parties free from any liability therefor.

No party shall ever be responsible, on a price basis higher than the price received by such party, to any other party's lessor or royalty owner, and if such other party's lessor or royalty owner should demand and receive settlement on a higher price basis, the party contributing the affected Lease shall bear the additional royalty burden attributable to such higher price.

Nothing contained in this Article III.B. shall be deemed an assignment or cross-assignment of interests covered hereby, and in the event two or more parties contribute to this agreement jointly owned Leases, the parties' undivided interests in said Leaseholds shall be deemed separate leasehold interests for the purposes of this agreement.

C. Subsequently Created Interests:

If any party has contributed hereto a Lease or Interest that is burdened with an assignment of production given as security for the payment of money, or if, after the date of this agreement, any party creates an overriding royalty, production payment, net profits interest, assignment of production or other burden payable out of production attributable to its working interest hereunder, such burden shall be deemed a "Subsequently Created Interest." Further, if any party has contributed hereto a Lease or Interest burdened with an overriding royalty, production payment, net profits interests, or other burden payable out of production created prior to the date of this agreement, and such burden is not shown on Exhibit "A," such burden also shall be deemed a Subsequently Created Interest to the extent such burden causes the burdens on such party's Lease or Interest to exceed the amount stipulated in Article III.B. above.

The party whose interest is burdened with the Subsequently Created Interest (the "Burdened Party") shall assume and alone bear, pay and discharge the Subsequently Created Interest and shall indemnify, defend and hold harmless the other parties from and against any liability therefor. Further, if the Burdened Party fails to pay, when due, its share of expenses chargeable hereunder, all provisions of Article VII.B. shall be enforceable against the Subsequently Created Interest in the same manner as they are enforceable against the working interest of the Burdened Party. If the Burdened Party is required under this agreement to assign or relinquish to any other party, or parties, all or a portion of its working interest and/or the production attributable thereto, said other party, or parties, shall receive said assignment and/or production free and clear of said Subsequently Created Interest, and the Burdened Party shall indemnify, defend and hold harmless said other party, or parties, from any and all claims and demands for payment asserted by owners of the Subsequently Created Interest.

ARTICLE IV.
TITLES

A. Title Examination:

Title examination shall be made on the Drillsite of any proposed well prior to commencement of drilling operations and, if a majority in interest of the Drilling Parties so request or Operator so elects, title examination shall be made on the entire Drilling Unit, or maximum anticipated Drilling Unit, of the well. The opinion will include the ownership of the working interest, minerals, royalty, overriding royalty and production payments under the applicable Leases. Each party contributing Leases and/or Oil and Gas Interests to be included in the Drillsite or Drilling Unit, if appropriate, shall furnish to Operator all abstracts (including federal lease status reports), title opinions, title papers and curative material in its possession free of charge. All such information not in the possession of or made available to Operator by the parties, but necessary for the examination of the title, shall be obtained by Operator. Operator shall cause title to be examined by attorneys on its staff or by outside attorneys. Copies of all title opinions shall be furnished to each Drilling Party. Costs incurred by Operator in procuring abstracts, fees paid outside attorneys for title examination (including preliminary, supplemental, shut-in royalty opinions and division order title opinions) and other direct charges as provided in Exhibit "C" shall be borne by the Drilling Parties in the proportion that the interest of each Drilling Party bears to the total interest of all Drilling Parties as such interests appear in Exhibit "A." Operator shall make no charge for services rendered by its staff attorneys or other personnel in the performance of the above functions.

Each party shall be responsible for securing curative matter and pooling amendments or agreements required in connection with Leases or Oil and Gas Interests contributed by such party. Operator shall be responsible for the preparation and recording of pooling designations or declarations and communitization agreements as well as the conduct of hearings before governmental agencies for the creation, amendment or modification of drilling or spacing units or other orders necessary or appropriate to the conduct of operations hereunder. This shall not prevent any party from appearing on its own behalf at such hearings. Costs incurred by Operator, including fees paid to outside attorneys, which are associated with hearings before governmental agencies, and which costs are necessary and proper for the activities contemplated under this agreement, shall be direct charges to the joint account and shall not be covered by the administrative overhead charges as provided in Exhibit "C."

Operator shall make no charge for services rendered by its staff attorneys or other personnel in the performance of the above functions.

No well shall be drilled on the Contract Area until after (1) the title to the Drillsite or Drilling Unit, if appropriate, has been examined as above provided, and (2) the title has been approved by the examining attorney or title has been accepted by all of the Drilling Parties in such well.

B. Loss or Failure of Title:

1. Failure of Title: Should any Oil and Gas Interest or Oil and Gas Lease be lost through failure of title, which results in a reduction of interest from that shown on Exhibit "A," the party credited with contributing the affected Lease or Interest (including, if applicable, a successor in interest to such party) shall have ninety (90) days from final determination of title failure to acquire a new lease or other instrument curing the entirety of the title failure, which acquisition will not be subject to Article VIII.B., and failing to do so, this agreement, nevertheless, shall continue in force as to all remaining Oil and Gas Leases and Interests; and,

(a) The party credited with contributing the Oil and Gas Lease or Interest affected by the title failure (including, if applicable, a successor in interest to such party) shall bear alone the entire loss and it shall not be entitled to recover from Operator or the other parties any development or operating costs which it may have previously paid or incurred, but there shall be no additional liability on its part to the other parties hereto by reason of such title failure;

(b) There shall be no retroactive adjustment of expenses incurred or revenues received from the operation of the Lease or Interest which has failed, but the interests of the parties contained on Exhibit "A" shall be revised on an acreage basis, as of the time it is determined finally that title failure has occurred, so that the interest of the party whose Lease or Interest is affected by the title failure will thereafter be reduced in the Contract Area by the amount of the Lease or Interest failed;

(c) If the proportionate interest of the other parties hereto in any producing well previously drilled on the Contract Area is increased by reason of the title failure, the party who bore the costs incurred in connection with such well attributable to the Lease or Interest which has failed shall receive the proceeds attributable to the increase in such interest (less costs and burdens attributable thereto) until it has been reimbursed for unrecovered costs paid by it in connection with such well attributable to such failed Lease or Interest;

(d) Should any person not a party to this agreement, who is determined to be the owner of any Lease or Interest which has failed, pay in any manner any part of the cost of operation, development, or equipment, such amount shall be paid to the party or parties who bore the costs which are so refunded;

(e) Any liability to account to a person not a party to this agreement for prior production of Oil and Gas which arises by reason of title failure shall be borne severally by each party (including a predecessor to a current party) who received production for which such accounting is required based on the amount of such production received, and each such party shall severally indemnify, defend and hold harmless all other parties hereto for any such liability to account;

(f) No charge shall be made to the joint account for legal expenses, fees or salaries in connection with the defense of the Lease or Interest claimed to have failed, but if the party contributing such Lease or Interest hereto elects to defend its title it shall bear all expenses in connection therewith; and

(g) If any party is given credit on Exhibit "A" to a Lease or Interest which is limited solely to ownership of an interest in the wellbore of any well or wells and the production therefrom, such party's absence of interest in the remainder of the Contract Area shall be considered a Failure of Title as to such remaining Contract Area unless that absence of interest is reflected on Exhibit "A."

2. Loss by Non-Payment or Erroneous Payment of Amount Due: If, through mistake or oversight, any rental, shut-in well payment, minimum royalty or royalty payment, or other payment necessary to maintain all or a portion of an Oil and Gas Lease or interest is not paid or is erroneously paid, and as a result a Lease or Interest terminates, there shall be no monetary liability against the party who failed to make such payment. Unless the party who failed to make the required payment secures a new Lease or Interest covering the same interest within ninety (90) days from the discovery of the failure to make proper payment, which acquisition will not be subject to Article VIII.B., the interests of the parties reflected on Exhibit "A" shall be revised on an acreage basis, effective as of the date of termination of the Lease or Interest involved, and the party who failed to make proper payment will no longer be credited with an interest in the Contract Area on account of ownership of the Lease or Interest which has terminated. If the party who failed to make the required payment shall not have been fully reimbursed, at the time of the loss, from the proceeds of the sale of Oil and Gas attributable to the lost Lease or Interest, calculated on an acreage basis, for the development and operating costs previously paid on account of such Lease or Interest, it shall be reimbursed for unrecovered actual costs previously paid by it (but not for its share of the cost of any dry hole previously drilled or wells previously abandoned) from so much of the following as is necessary to effect reimbursement:

(a) Proceeds of Oil and Gas produced prior to termination of the Lease or Interest, less operating expenses and lease burdens chargeable hereunder to the person who failed to make payment, previously accrued to the credit of the lost Lease or Interest, on an acreage basis, up to the amount of unrecovered costs;

(b) Proceeds of Oil and Gas, less operating expenses and lease burdens chargeable hereunder to the person who failed to make payment, up to the amount of unrecovered costs attributable to that portion of Oil and Gas thereafter produced and marketed (excluding production from any wells thereafter drilled) which, in the absence of such Lease or Interest termination, would be attributable to the lost Lease or Interest on an acreage basis and which as a result of such Lease or Interest termination is credited to other parties, the proceeds of said portion of the Oil and Gas to be contributed by the other parties in proportion to their respective interests reflected on Exhibit "A"; and,

(c) Any moneys, up to the amount of unrecovered costs, that may be paid by any party who is, or becomes, the owner of the Lease or Interest lost, for the privilege of participating in the Contract Area or becoming a party to this agreement.

3. Other Losses: All losses of Leases or Interests committed to this agreement, other than those set forth in Articles IV.B.1. and IV.B.2. above, shall be joint losses and shall be borne by all parties in proportion to their interests shown on Exhibit "A." This shall include but not be limited to the loss of any Lease or Interest through failure to develop or because express or implied terms thereof have not been performed (other than performance which requires only the payment of money) and the loss of any Lease or Interest by expiration at the end of its primary term if it is not renewed or extended. There shall be no readjustment of interests in the remaining portion of the Contract Area on account of any joint loss.

4. Curing Title: In the event of a Failure of Title under Article IV.B.1. or a loss of title under Article IV.B.2. above, any Lease or Interest acquired by any party hereto (other than the party whose interest has failed or was lost) during the ninety (90) day period provided by Article IV.B.1. and Article IV.B.2. above covering all or a portion of the interest that has failed or was lost shall be offered at cost to the party whose interest has failed or was lost, and the provisions of Article VIII.B. shall not apply to such acquisition.

ARTICLE V.
OPERATOR

A. Designation and Responsibilities of Operator:

CDX GAS, LLC shall be the Operator of the Contract Area, and shall conduct and direct and have full control of all operations on the Contract Area as permitted and required by, and within the limits of this agreement. In its performance of services hereunder for the Non-Operators, Operator shall be an independent contractor not subject to the control or direction of the Non-Operators except as to the type of operation to be undertaken in accordance with the election procedures contained in this agreement. Operator shall not be deemed, or hold itself out as, the agent of the Non-Operators with authority to bind them to any obligation or liability assumed or incurred by Operator as to any third party. Operator shall conduct its activities under this agreement as a reasonable prudent operator, in a good and workmanlike manner, with due diligence and dispatch, in accordance with good oilfield practice, and in compliance with applicable law and regulation, but in no event shall it have any liability as Operator to the other parties for losses sustained or liabilities incurred except such as may result from gross negligence or willful misconduct.

B. Resignation or Removal of Operator and Selection of Successor:

1. Resignation or Removal of Operator: Operator may resign at any time by giving written notice thereof to Non-Operators. If Operator terminates its legal existence, no longer owns an interest hereunder in the Contract Area, or is no longer capable of serving as Operator, Operator shall be deemed to have resigned without any action by Non-Operators, except the selection of a successor. Operator may be removed only for good cause by the affirmative vote of Non-Operators owning a majority interest based on ownership as shown on Exhibit "A" remaining after excluding the voting interest of Operator; such vote shall not be deemed effective until a written notice has been delivered to the Operator by a Non-Operator detailing the alleged default and Operator has failed to cure the default within thirty (30) days from its receipt of the notice or, if the default concerns an operation then being conducted, within forty-eight (48) hours of its receipt of the notice. For purposes hereof, "good cause" shall mean not only gross negligence or willful misconduct but also the material breach of or inability to meet the standards of operation contained in Article V.A. or material failure or inability to perform its obligations under this agreement.

Subject to Article VII.D.1., such resignation or removal shall not become effective until 7:00 o'clock A.M. on the first day of the calendar month following the expiration of ninety (90) days after the giving of notice of resignation by Operator or action by the Non-Operators to remove Operator, unless a successor Operator has been selected and assumes the duties of Operator at an earlier date. Operator, after effective date of resignation or removal, shall be bound by the terms hereof as a Non-Operator. A change of a corporate name or structure of Operator or transfer of Operator's interest to any single subsidiary, parent or successor corporation shall not be the basis for removal of Operator.

2. Selection of Successor Operator: Upon the resignation or removal of Operator under any provision of this agreement, a successor Operator shall be selected by the parties. The successor Operator shall be selected from the parties owning an interest in the Contract Area at the time such successor Operator is selected. The successor Operator shall be selected by the affirmative vote of two (2) or more parties owning a majority interest based on ownership as shown on Exhibit "A"; provided, however, if an Operator which has been removed or is deemed to have resigned fails to vote or votes only to succeed itself, the successor Operator shall be selected by the affirmative vote of the party or parties owning a majority interest based on ownership as shown on Exhibit "A" remaining after excluding the voting interest of the Operator that was removed or resigned. The former Operator shall promptly deliver to the successor Operator all records and data relating to the operations conducted by the former Operator to the extent such records and data are not already in the possession of the successor operator. Any cost of obtaining or copying the former Operator's records and data shall be charged to the joint account.

3. Effect of Bankruptcy: If Operator becomes insolvent, bankrupt or is placed in receivership, it shall be deemed to have resigned without any action by Non-Operators, except the selection of a successor. If a petition for relief under the federal bankruptcy laws is filed by or against Operator, and the removal of Operator is prevented by the federal bankruptcy court, all Non-Operators and Operator shall comprise an interim operating committee to serve until Operator has elected to reject or assume this agreement pursuant to the Bankruptcy Code, and an election to reject this agreement by Operator as a debtor in possession, or by a trustee in bankruptcy, shall be deemed a resignation as Operator without any action by Non-Operators, except the selection of a successor. During the period of time the operating committee controls operations, all actions shall require the approval of two (2) or more parties owning a majority interest based on ownership as shown on Exhibit "A." In the event there are only two (2) parties to this agreement, during the period of time the operating committee controls operations, a third party acceptable to Operator, Non-Operator and the federal bankruptcy court shall be selected as a member of the operating committee, and all actions shall require the approval of two (2) members of the operating committee without regard for their interest in the Contract Area based on Exhibit "A."

C. Employees and Contractors:

The number of employees or contractors used by Operator in conducting operations hereunder, their selection, and the hours of labor and the compensation for services performed shall be determined Operator, and all such employees or contractors shall be the employees or contractors of Operator.

D. Rights and Duties of Operator:

1. Competitive Rates and Use of Affiliates: All wells drilled on the Contract Area shall be drilled on a competitive contract basis at the usual rates prevailing in the area. If it so desires, Operator may employ its own tools and equipment in the drilling of wells, but its charges therefor shall not exceed the prevailing rates in the area and the rate of such charges shall be agreed upon by the parties in writing before drilling operations are commenced, and such work shall be performed by Operator under the same terms and conditions as are customary and usual in the area in contracts of independent contractors who are doing work of a similar nature. All work performed or materials supplied by affiliates or related parties of Operator shall be performed or supplied at competitive rates, pursuant to written agreement, and in accordance with customs and standards prevailing in the industry.

2. Discharge of Joint Account Obligations: Except as herein otherwise specifically provided, Operator shall promptly pay and discharge expenses incurred in the development and operation of the Contract Area pursuant to this agreement and shall charge each of the parties hereto with their respective proportionate shares upon the expense basis provided in Exhibit "C." Operator shall keep an accurate record of the joint account hereunder, showing expenses incurred and charges and credits made and received.

3. Protection from Liens: Operator shall pay or cause to be paid as and when they become due and payable, all accounts of contractors and suppliers and wages and salaries for services rendered or performed, and for materials supplied on, to or in respect of the Contract Area or any operations for the joint account thereof, and shall keep the Contract Area free from

liens and encumbrances resulting therefrom except for those resulting from a bona fide dispute as to services rendered or materials supplied.

4. Custody of Funds: Operator shall hold for the account of the Non-Operators any funds of the Non-Operators advanced or paid to the Operator, either for the conduct of operations hereunder or as a result of the sale of production from the Contract Area, and such funds shall remain the funds of the Non-Operators on whose account they are advanced or paid until used for their intended purpose or otherwise delivered to the Non-Operators or applied toward the payment of debts as provided in Article VII.B. Nothing in this paragraph shall be construed to establish a fiduciary relationship between Operator and Non-Operators for any purpose other than to account for Non-Operator funds as herein specifically provided. Nothing in this paragraph shall require the maintenance by Operator of separate accounts for the funds of Non-Operators unless the parties otherwise specifically agree.

5. Access to Contract Area and Records: Operator shall, except as otherwise provided herein, permit each Non-Operator or its duly authorized representative, at the Non-Operator's sole risk and cost, full and free access at all reasonable times to all operations of every kind and character being conducted for the joint account on the Contract Area and to the records of operations conducted thereon or production therefrom, including Operator's books and records relating thereto. Such access rights shall not be exercised in a manner interfering with Operator's conduct of an operation hereunder and shall not obligate Operator to furnish any geologic or geophysical data of an interpretive nature unless the cost of preparation of such interpretive data was charged to the joint account. Operator will furnish to each Non-Operator upon request copies of any and all reports and information obtained by Operator in connection with production and related items, including, without limitation, meter and chart reports, production purchaser statements, run tickets and monthly gauge reports, but excluding purchase contracts and pricing information to the extent not applicable to the production of the Non-Operator seeking the information. Any audit of Operator's records relating to amounts expended and the appropriateness of such expenditures shall be conducted in accordance with the audit protocol specified in Exhibit "C."

6. Filing and Furnishing Governmental Reports: Operator will file, and upon written request promptly furnish copies to each requesting Non-Operator not in default of its payment obligations, all operational notices, reports or applications required to be filed by local, State, Federal or Indian agencies or authorities having jurisdiction over operations hereunder. Each Non-Operator shall provide to Operator on a timely basis all information necessary to Operator to make such filings.

7. Drilling and Testing Operations: The following provisions shall apply to each well drilled hereunder, including but not limited to the Initial Well:

(a) Operator will promptly advise Non-Operators of the date on which the well is spudded, or the date on which drilling operations are commenced.

(b) Operator will send to Non-Operators such reports, test results and notices regarding the progress of operations on the well as the Non-Operators shall reasonably request, including, but not limited to, daily drilling reports, completion reports, and well logs.

(c) Operator shall adequately test all Zones encountered which may reasonably be expected to be capable of producing Oil and Gas in paying quantities as a result of examination of the electric log or any other logs or cores or tests conducted hereunder.

8. Cost Estimates: Upon request of any Consenting Party, Operator shall furnish estimates of current and cumulative costs incurred for the joint account at reasonable intervals during the conduct of any operation pursuant to this agreement. Operator shall not be held liable for errors in such estimates so long as the estimates are made in good faith.

9. Insurance: At all times while operations are conducted hereunder, Operator shall comply with the workers compensation law of the state where the operations are being conducted; provided, however, that Operator may be a self-insurer for liability under said compensation laws in which event the only charge that shall be made to the joint account shall be as provided in Exhibit "C." Operator shall also carry or provide insurance for the benefit of the joint account of the parties as outlined in Exhibit "D" attached hereto and made a part hereof. Operator shall require all contractors engaged in work on or for the Contract Area to comply with the workers compensation law of the state where the operations are being conducted and to maintain such other insurance as Operator may require.

In the event automobile liability insurance is specified in said Exhibit "D," or subsequently receives the approval of the parties, no direct charge shall be made by Operator for premiums paid for such insurance for Operator's automotive equipment.

ARTICLE VI.
DRILLING AND DEVELOPMENT

A. Initial Well:

Reworking

On or before the 1st day of February, 2001, Operator shall commence the ~~drilling~~ of the initial Well at the following location:

Section 33, T-5-S, R-19-E, Uintah County, Utah

and shall thereafter continue the drilling of the well with due diligence to

The [illegible] the Initial Well shall be [illegible] by all [illegible] subject to the [illegible] and [illegible] operations and [illegible] Operating Agreement, Article [illegible] of Exhibit [illegible]

B. Subsequent Operations:

1. Proposed Operations: If any party hereto should desire to drill any well on the Contract Area other than the Initial Well, or if any party should desire to Rework, Sidetrack, Deepen, Recomplete or Plug Back a dry hole or a well no longer capable of producing in paying quantities in which such party has not otherwise relinquished its interest in the proposed objective Zone under this agreement, the party desiring to drill, Rework, Sidetrack, Deepen, Recomplete or Plug Back such a well shall give notice [illegible] of the proposed operation to the parties who have not otherwise relinquished their interest in such objective Zone

under this agreement and to all other parties in the case of a proposal for Sidetracking or Deepening, specifying the work to be performed, the location, proposed depth, objective Zone and the estimated cost of the operation. The parties to whom such a notice is delivered shall have thirty (30) days after receipt of the notice within which to notify the party proposing to do the work whether they elect to participate in the cost of the proposed operation. If a drilling rig is on location, notice of a proposal to Rework, Sidetrack, Recomplete, Plug Back or Deepen may be given by telephone and the response period shall be limited to forty-eight (48) hours, exclusive of Saturday, Sunday and legal holidays. Failure of a party to whom such notice is delivered to reply within the period above fixed shall constitute an election by that party not to participate in the cost of the proposed operation. Any proposal by a party to conduct an operation conflicting with the operation initially proposed shall be delivered to all parties within the time and in the manner provided in Article VI.B.6.

If all parties to whom such notice is delivered elect to participate in such a proposed operation, the parties shall be contractually committed to participate therein provided such operations are commenced within the time period hereafter set forth, and Operator shall, no later than ninety (90) days after expiration of the notice period of thirty (30) days (or as promptly as practicable after the expiration of the forty-eight (48) hour period when a drilling rig is on location, as the case may be), actually commence the proposed operation and thereafter complete it with due diligence at the risk and expense of the parties participating therein; provided, however, said commencement date may be extended upon written notice of same by Operator to the other parties, for a period of up to thirty (30) additional days if, in the sole opinion of Operator, such additional time is reasonably necessary to obtain permits from governmental authorities, surface rights (including rights-of-way) or appropriate drilling equipment, or to complete title examination or curative matter required for title approval or acceptance. If the actual operation has not been commenced within the time provided (including any extension thereof as specifically permitted herein or in the force majeure provisions of Article XI) and if any party hereto still desires to conduct said operation, written notice proposing same must be resubmitted to the other parties in accordance herewith as if no prior proposal had been made. Those parties that did not participate in the drilling of a well for which a proposal to Deepen or Sidetrack is made hereunder shall, if such parties desire to participate in the proposed Deepening or Sidetracking operation, reimburse the Drilling Parties in accordance with Article VI.B.4. in the event of a Deepening operation and in accordance with Article VI.B.5. in the event of a Sidetracking operation.

2. Operations by Less Than All Parties:

(a) Determination of Participation. If any party to whom such notice is delivered as provided in Article VI.B.1. or VI.C.1. (Option No. 2) elects not to participate in the proposed operation, then, in order to be entitled to the benefits of this Article, the party or parties giving the notice and such other parties as shall elect to participate in the operation shall, no later than ninety (90) days after the expiration of the notice period of thirty (30) days (or as promptly as practicable after the expiration of the forty-eight (48) hour period when a drilling rig is on location, as the case may be) actually commence the proposed operation and complete it with due diligence. Operator shall perform all work for the account of the Consenting Parties; provided, however, if no drilling rig or other equipment is on location, and if Operator is a Non-Consenting Party, the Consenting Parties shall either: (i) request Operator to perform the work required by such proposed operation for the account of the Consenting Parties, or (ii) designate one of the Consenting Parties as Operator to perform such work. The rights and duties granted to and imposed upon the Operator under this agreement are granted to and imposed upon the party designated as Operator for an operation in which the original Operator is a Non-Consenting Party. Consenting Parties, when conducting operations on the Contract Area pursuant to this Article VI.B.2., shall comply with all terms and conditions of this agreement.

If less than all parties approve any proposed operation, the proposing party, immediately after the expiration of the applicable notice period, shall advise all Parties of the total interest of the parties approving such operation and its recommendation as to whether the Consenting Parties should proceed with the operation as proposed. Each Consenting Party, within forty-eight (48) hours (exclusive of Saturday, Sunday, and legal holidays) after delivery of such notice, shall advise the proposing party of its desire to (i) limit participation to such party's interest as shown on Exhibit "A" or (ii) carry only its proportionate part (determined by dividing such party's interest in the Contract Area by the interests of all Consenting Parties in the Contract Area) of Non-Consenting Parties' interests, or (iii) carry its proportionate part (determined as provided in (ii)) of Non-Consenting Parties' interests together with all or a portion of its proportionate part of any Non-Consenting Parties' interests that any Consenting Party did not elect to take. Any interest of Non-Consenting Parties that is not carried by a Consenting Party shall be deemed to be carried by the party proposing the operation if such party does not withdraw its proposal. Failure to advise the proposing party within the time required shall be deemed an election under (i). In the event a drilling rig is on location, notice may be given by telephone, and the time permitted for such a response shall not exceed a total of forty-eight (48) hours (exclusive of Saturday, Sunday and legal holidays). The proposing party, at its election, may withdraw such proposal if there is less than 100% participation and shall notify all parties of such decision within ten (10) days, or within twenty-four (24) hours if a drilling rig is on location, following expiration of the applicable response period. If 100% subscription to the proposed operation is obtained, the proposing party shall promptly notify the Consenting Parties of their proportionate interests in the operation and the party serving as Operator shall commence such operation within the period provided in Article VI.B.1, subject to the same extension rights as provided therein.

(b) Relinquishment of Interest for Non-Participation. The entire cost and risk of conducting such operations shall be borne by the Consenting Parties in the proportions they have elected to bear same under the terms of the preceding paragraph. Consenting Parties shall keep the leasehold estates involved in such operations free and clear of all liens and encumbrances of every kind created by or arising from the operations of the Consenting Parties. If such an operation results in a dry hole, then subject to Articles VI.B.6. and VI.B.7., the Consenting Parties shall plug and abandon the well and restore the surface location at their sole cost, risk and expense; provided, however, that those Non-Consenting Parties that participated in the drilling, Deepening or Sidetracking of the well shall remain liable for, and shall pay, their proportionate shares of the cost of plugging and abandoning the well and restoring the surface location insofar only as those costs were not increased by the wrongful acts of the Consenting Parties. If any well drilled, Reworked, Sidetracked, Deepened, Recompleted or Plugged Back under the provisions of this Article results in a well capable of producing Oil and/or Gas in paying quantities, the Consenting Parties shall Complete and equip the well to produce at their sole cost and risk, and the well shall then be turned over to Operator (if the Operator did not conduct the operations) and shall be operated by it at the expense and for the account of the Consenting Parties. Upon commencement of operations for the drilling, Reworking, Sidetracking, Recompleting, Deepening or Plugging Back of any such well by Consenting Parties in accordance with the provisions of this Article, each Non-Consenting Party shall be deemed to have relinquished to Consenting Parties, and the Consenting Parties shall own and be entitled to receive, in proportion to their respective interests, all of such Non-Consenting Party's interest in the well and share of production therefrom or, in the case of a Reworking, Sidetracking,

Deepening, Recompleting or Plugging Back, or a Completion pursuant to Article VI.C.1. Option No. 2, all of such Non-Consenting Party's interest in the production obtained from the operation in which the Non-Consenting Party did not elect to participate. Such relinquishment shall be effective until the proceeds of the sale of such share, calculated at the well, or market value thereof if such share is not sold (after deducting applicable ad valorem, production, severance, and excise taxes, royalty, overriding royalty and other interests not excepted by Article III.C. payable out of or measured by the production from such well accruing with respect to such interest until it reverts), shall equal the total of the following:

(i) 300 % of each such Non-Consenting Party's share of the cost of any newly acquired surface equipment beyond the wellhead connections (including but not limited to stock tanks, separators, treaters, pumping equipment and piping), plus 100% of each such Non-Consenting Party's share of the cost of operation of the well commencing with first production and continuing until each such Non-Consenting Party's relinquished interest shall revert to it under other provisions of this Article, it being agreed that each Non-Consenting Party's share of such costs and equipment will be that interest which would have been chargeable to such Non-Consenting Party had it participated in the well from the beginning of the operations; and

(ii) 300 % of (a) that portion of the costs and expenses of drilling, Reworking, Sidetracking, Deepening, Plugging Back, testing, Completing, and Recompleting, after deducting any cash contributions received under Article VIII.C, and of (b) that portion of the cost of newly acquired equipment in the well (to and including the wellhead connections), which would have been chargeable to such Non-Consenting Party if it had participated therein.

Notwithstanding anything to the contrary in this Article VI.B., if the well does not reach the deepest objective Zone described in the notice proposing the well for reasons other than the encountering of granite or practically impenetrable substance or other condition in the hole rendering further operations impracticable, Operator shall give notice thereof to each Non-Consenting Party who submitted or voted for an alternative proposal under Article VI.B.6. to drill the well to a shallower Zone than the deepest objective Zone proposed in the notice under which the well was drilled, and each such Non-Consenting Party shall have the option to participate in the initial proposed Completion of the well by paying its share of the cost of drilling the well to its actual depth, calculated in the manner provided in Article VI.B.4. (a). If any such Non-Consenting Party does not elect to participate in the first Completion proposed for such well, the relinquishment provisions of this Article VI.B.2. (b) shall apply to such party's interest.

(c) Reworking, Recompleting or Plugging Back. An election not to participate in the drilling, Sidetracking or Deepening of a well shall be deemed an election not to participate in any Reworking or Plugging Back operation proposed in such a well, or portion thereof, to which the initial non-consent election applied that is conducted at any time prior to full recovery by the Consenting Parties of the Non-Consenting Party's recoupment amount. Similarly, an election not to participate in the Completing or Recompleting of a well shall be deemed an election not to participate in any Reworking operation proposed in such a well, or portion thereof, to which the initial non-consent election applied that is conducted at any time prior to full recovery by the Consenting Parties of the Non-Consenting Party's recoupment amount. Any such Reworking, Recompleting or Plugging Back operation conducted during the recoupment period shall be deemed part of the cost of operation of said well and there shall be added to the sums to be recouped by the Consenting Parties _____% of that portion of the costs of the Reworking, Recompleting or Plugging Back operation which would have been chargeable to such Non-Consenting Party had it participated therein. If such a Reworking, Recompleting or Plugging Back operation is proposed during such recoupment period, the provisions of this Article VI.B. shall be applicable as between said Consenting Parties in said well.

(d) Recoupment Matters. During the period of time Consenting Parties are entitled to receive Non-Consenting Party's share of production, or the proceeds therefrom, Consenting Parties shall be responsible for the payment of all ad valorem, production, severance, excise, gathering and other taxes, and all royalty, overriding royalty and other burdens applicable to Non-Consenting Party's share of production not excepted by Article III.C.

In the case of any Reworking, Sidetracking, Plugging Back, Recompleting or Deepening operation, the Consenting Parties shall be permitted to use, free of cost, all casing, tubing and other equipment in the well, but the ownership of all such equipment shall remain unchanged; and upon abandonment of a well after such Reworking, Sidetracking, Plugging Back, Recompleting or Deepening, the Consenting Parties shall account for all such equipment to the owners thereof, with each party receiving its proportionate part in kind or in value, less cost of salvage.

Within ninety (90) days after the completion of any operation under this Article, the party conducting the operations for the Consenting Parties shall furnish each Non-Consenting Party with an inventory of the equipment in and connected to the well, and an itemized statement of the cost of drilling, Sidetracking, Deepening, Plugging Back, testing, Completing, Recompleting, and equipping the well for production; or, at its option, the operating party, in lieu of an itemized statement of such costs of operation, may submit a detailed statement of monthly billings. Each month thereafter, during the time the Consenting Parties are being reimbursed as provided above, the party conducting the operations for the Consenting Parties shall furnish the Non-Consenting Parties with an itemized statement of all costs and liabilities incurred in the operation of the well, together with a statement of the quantity of Oil and Gas produced from it and the amount of proceeds realized from the sale of the well's working interest production during the preceding month. In determining the quantity of Oil and Gas produced during any month, Consenting Parties shall use industry accepted methods such as but not limited to metering or periodic well tests. Any amount realized from the sale or other disposition of equipment newly acquired in connection with any such operation which would have been owned by a Non-Consenting Party had it participated therein shall be credited against the total unrecovered costs of the work done and of the equipment purchased in determining when the interest of such Non-Consenting Party shall revert to it as above provided, and if there is a credit balance, it shall be paid to such Non-Consenting Party.

If and when the Consenting Parties recover from a Non-Consenting Party's relinquished interest the amounts provided for above, the relinquished interests of such Non-Consenting Party shall automatically revert to it as of 7:00 a.m. on the day following the day on which such recovery occurs, and, from and after such reversion, such Non-Consenting Party shall own the same interest in such well, the material and equipment in or pertaining thereto, and the production therefrom as such Non-Consenting Party would have been entitled to had it participated in the drilling, Sidetracking, Reworking, Deepening, Recompleting or Plugging Back of said well. Thereafter, such Non-Consenting Party shall be charged with and shall pay its proportionate part of the further costs of the operation of said well in accordance with the terms of this agreement and Exhibit "C" attached hereto.

3. Stand-By Costs. When a well which has been drilled or Deepened has reached its authorized depth and all tests have been completed, and the results thereof furnished to the parties, or when operations on the well have been otherwise terminated pursuant to Article VI.B. hereof (such circumstances are hereinafter referred to as a "Potential Completion"),

Sidetracking, Deepening, Recompleting, Plugging Back or Completing operation in such a well (including the period required under Article VI.B.6. to resolve competing proposals) shall be charged and borne as part of the drilling or Deepening operation just completed. Stand-by costs subsequent to all parties responding, or expiration of the response time permitted, whichever first occurs, and prior to agreement as to the participating interests of all Consenting Parties pursuant to the terms of the second grammatical paragraph of Article VI.B.2. (a), shall be charged to and borne as part of the proposed operation, but if the proposal is subsequently withdrawn because of insufficient participation, such stand-by costs shall be allocated between the Consenting Parties in the proportion each Consenting Party's interest as shown on Exhibit "A" bears to the total interest as shown on Exhibit "A" of all Consenting Parties.

In the event that notice for a Sidetracking operation is given while the drilling rig to be utilized is on location, any party may request and receive up to five (5) additional days after expiration of the forty-eight hour response period specified in Article VI.B.1. within which to respond by paying for all stand-by costs and other costs incurred during such extended response period; Operator may require such party to pay the estimated stand-by time in advance as a condition to extending the response period. If more than one party elects to take such additional time to respond to the notice, standby costs shall be allocated between the parties taking additional time to respond on a day-to-day basis in the proportion each electing party's interest as shown on Exhibit "A" bears to the total interest as shown on Exhibit "A" of all the electing parties.

4. Deepening. If less than all parties elect to participate in a drilling, Sidetracking, or Deepening operation proposed pursuant to Article VI.B.1., the interest relinquished by the Non-Consenting Parties to the Consenting Parties under Article VI.B.2. shall relate only and be limited to the lesser of (i) the total depth actually drilled or (ii) the objective depth or Zone of which the parties were given notice under Article VI.B.1. ("Initial Objective"). Such well shall not be Deepened beyond the Initial Objective without first complying with this Article to afford the Non-Consenting Parties the opportunity to participate in the Deepening operation.

In the event any Consenting Party desires to drill or Deepen a Non-Consent Well to a depth below the Initial Objective, such party shall give notice thereof, complying with the requirements of Article VI.B.1., to all parties (including Non-Consenting Parties). Thereupon, Articles VI.B.1. and 2. shall apply and all parties receiving such notice shall have the right to participate or not participate in the Deepening of such well pursuant to said Articles VI.B.1. and 2. If a Deepening operation is approved pursuant to such provisions, and if any Non-Consenting Party elects to participate in the Deepening operation, such Non-Consenting party shall pay or make reimbursement (as the case may be) of the following costs and expenses:

(a) If the proposal to Deepen is made prior to the Completion of such well as a well capable of producing in paying quantities, such Non-Consenting Party shall pay (or reimburse Consenting Parties for, as the case may be) that share of costs and expenses incurred in connection with the drilling of said well from the surface to the Initial Objective which Non-Consenting Party would have paid had such Non-Consenting Party agreed to participate therein, plus the Non-Consenting Party's share of the cost of Deepening and of participating in any further operations on the well in accordance with the other provisions of this Agreement; provided, however, all costs for testing and Completion or attempted Completion of the well incurred by Consenting Parties prior to the point of actual operations to Deepen beyond the Initial Objective shall be for the sole account of Consenting Parties.

(b) If the proposal is made for a Non-Consent Well that has been previously Completed as a well capable of producing in paying quantities, but is no longer capable of producing in paying quantities, such Non-Consenting Party shall pay (or reimburse Consenting Parties for, as the case may be) its proportionate share of all costs of drilling, Completing, and equipping said well from the surface to the Initial Objective, calculated in the manner provided in paragraph (a) above, less those costs recouped by the Consenting Parties from the sale of production from the well. The Non-Consenting Party shall also pay its proportionate share of all costs of re-entering said well. The Non-Consenting Parties' proportionate part (based on the percentage of such well Non-Consenting Party would have owned had it previously participated in such Non-Consent Well) of the costs of salvable materials and equipment remaining in the hole and salvable surface equipment used in connection with such well shall be determined in accordance with Exhibit "C." If the Consenting Parties have recouped the cost of drilling, Completing, and equipping the well at the time such Deepening operation is conducted, then a Non-Consenting Party may participate in the Deepening of the well with no payment for costs incurred prior to re-entering the well for Deepening.

The foregoing shall not imply a right of any Consenting Party to propose any Deepening for a Non-Consent Well prior to the drilling of such well to its Initial Objective without the consent of the other Consenting Parties as provided in Article VI.F.

5. Sidetracking. Any party having the right to participate in a proposed Sidetracking operation that does not own an interest in the affected wellbore at the time of the notice shall, upon electing to participate, tender to the wellbore owners its proportionate share (equal to its interest in the Sidetracking operation) of the value of that portion of the existing wellbore to be utilized as follows:

(a) If the proposal is for Sidetracking an existing dry hole, reimbursement shall be on the basis of the actual costs incurred in the initial drilling of the well down to the depth at which the Sidetracking operation is initiated.

(b) If the proposal is for Sidetracking a well which has previously produced, reimbursement shall be on the basis of such party's proportionate share of drilling and equipping costs incurred in the initial drilling of the well down to the depth at which the Sidetracking operation is conducted, calculated in the manner described in Article VI.B.4(b) above. Such party's proportionate share of the cost of the well's salvable materials and equipment down to the depth at which the Sidetracking operation is initiated shall be determined in accordance with the provisions of Exhibit "C."

6. Order of Preference of Operations. Except as otherwise specifically provided in this agreement, if any party desires to propose the conduct of an operation that conflicts with a proposal that has been made by a party under this Article VI, such party shall have fifteen (15) days from delivery of the initial proposal, or in the case of a proposal to drill a well or to perform an operation on a well where no drilling rig is on location, forty-eight (48) hours, exclusive of Saturday, Sunday and legal holidays, from delivery of the initial proposal if a drilling rig is on location for the well on which the operation is to be conducted, to deliver to all parties entitled to participate in the proposed operation such party's alternative proposal, such alternative proposal to contain the same information required to be included in the initial proposal. Each party receiving such proposals shall elect by delivery of notice to Operator within five (5) days after expiration of the proposal period, or within twenty-four (24) hours (exclusive of Saturday, Sunday and legal holidays) if a drilling rig is on location for the well that is the subject of the proposals, to participate in one of the competing proposals. Any party not electing within the time required shall be deemed not to have voted. The proposal receiving the vote of parties owning the largest aggregate percentage interest of the parties voting shall have priority over all other competing proposals. In the case of a tie vote, the

initial proposal shall prevail. Operator shall deliver notice of such result to all parties entitled to participate in the operation within five (5) days after expiration of the election period (or within twenty-four (24) hours, exclusive of Saturday, Sunday and legal holidays, if a drilling rig is on location). Each party shall then have two (2) days (or twenty-four (24) hours if a rig is on location) from receipt of such notice to elect by delivery of notice to Operator to participate in such operation or to relinquish interest in the affected well pursuant to the provisions of Article VI.B.2.; failure by a party to deliver notice within such period shall be deemed an election not to participate in the prevailing proposal.

7. Conformity to Spacing Pattern. Notwithstanding the provisions of this Article VI.B.2., it is agreed that no wells shall be proposed to be drilled to or Completed in or produced from a Zone from which a well located elsewhere on the Contract Area is producing, unless such well conforms to the then-existing well spacing pattern for such Zone.

8. Paying Wells. No party shall conduct any Reworking, Deepening, Plugging Back, Completion, Recompletion, or Sidetracking operation under this agreement with respect to any well then capable of producing in paying quantities except with the consent of all parties that have not relinquished interests in the well at the time of such operation.

C. Completion of Wells; Reworking and Plugging Back:

1. Completion: Without the consent of all parties, no well shall be drilled, Deepened or Sidetracked, except any well drilled, Deepened or Sidetracked pursuant to the provisions of Article VI.B.2. of this agreement. Consent to the drilling, Deepening or Sidetracking shall include:

☐ Option No. 1: All necessary expenditures for the drilling, Deepening or Sidetracking, testing, Completing and equipping of the well, including necessary tankage and/or surface facilities.

☐ Option No. 2: All necessary expenditures for the drilling, Deepening or Sidetracking and testing of the well. When such well has reached its authorized depth, and all logs, cores and other tests have been completed, and the results thereof furnished to the parties, Operator shall give immediate notice to the Non-Operators having the right to participate in a Completion attempt whether or not Operator recommends attempting to Complete the well, together with Operator's AFE for Completion costs if not previously provided. The parties receiving such notice shall have forty-eight (48) hours (exclusive of Saturday, Sunday and legal holidays) in which to elect by delivery of notice to Operator to participate in a recommended Completion attempt or to make a Completion proposal with an accompanying AFE. Operator shall deliver any such Completion proposal, or any Completion proposal conflicting with Operator's proposal, to the other parties entitled to participate in such Completion in accordance with the procedures specified in Article VI.B.6. Election to participate in a Completion attempt shall include consent to all necessary expenditures for the Completing and equipping of such well, including necessary tankage and/or surface facilities but excluding any stimulation operation not contained on the Completion AFE. Failure of any party receiving such notice to reply within the period above fixed shall constitute an election by that party not to participate in the cost of the Completion attempt; provided, that Article VI.B.6. shall control in the case of conflicting Completion proposals. If one or more, but less than all of the parties, elect to attempt a Completion, the provision of Article VI.B.2. hereof (the phrase "Reworking, Sidetracking, Deepening, Recompleting or Plugging Back" as contained in Article VI.B.2. shall be deemed to include "Completing") shall apply to the operations thereafter conducted by less than all parties; provided, however, that Article VI.B.2. shall apply separately to each separate Completion or Recompletion attempt undertaken hereunder, and an election to become a Non-Consenting Party as to one Completion or Recompletion attempt shall not prevent a party from becoming a Consenting Party in subsequent Completion or Recompletion attempts regardless whether the Consenting Parties as to earlier Completions or Recompletion have recouped their costs pursuant to Article VI.B.2.; provided further, that any recoupment of costs by a Consenting Party shall be made solely from the production attributable to the Zone in which the Completion attempt is made. Election by a previous Non-Consenting party to participate in a subsequent Completion or Recompletion attempt shall require such party to pay its proportionate share of the cost of salvable materials and equipment installed in the well pursuant to the previous Completion or Recompletion attempt, insofar and only insofar as such materials and equipment benefit the Zone in which such party participates in a Completion attempt.

2. Rework, Recomplete or Plug Back. No well shall be Reworked, Recompleted or Plugged Back except a well Reworked, Recompleted, or Plugged Back pursuant to the provisions of Article VI.B.2. of this agreement. Consent to the Reworking, Recompleting or Plugging Back of a well shall include all necessary expenditures in conducting such operations and Completing and equipping of said well, including necessary tankage and/or surface facilities.

D. Other Operations:

Operator shall not undertake any single project reasonably estimated to require an expenditure in excess of Twenty-five Thousand Dollars ($ 25,000) except in connection with the drilling, Sidetracking, Reworking, Deepening, Completing, Recompleting or Plugging Back of a well that has been previously authorized by or pursuant to this agreement; provided, however, that, in case of explosion, fire, flood or other sudden emergency, whether of the same or different nature, Operator may take such steps and incur such expenses as in its opinion are required to deal with the emergency to safeguard life and property but Operator, as promptly as possible, shall report the emergency to the other parties. If Operator prepares an AFE for its own use, Operator shall furnish any Non-Operator so requesting an information copy thereof for any single project costing in excess of Twenty-five thousand Dollars ($ 25,000). Any party who has not relinquished its interest in a well shall have the right to propose that Operator perform repair work or undertake the installation of artificial lift equipment or ancillary production facilities such as salt water disposal wells or to conduct additional work with respect to a well covered hereby or other similar project (but not including the installation of gathering lines or other transportation or marketing facilities, the installation of which shall be governed by separate agreement between the parties) estimated to require an expenditure in excess of the amount first set forth above in this Article VI.D. If Operator elects not to propose such operation so proposed by such other party, Operator shall give notice to all parties entitled to participate therein. If within thirty (30) days thereafter Operator receives the written consent of any party or parties owning at least 50 % of the interests of the parties entitled to participate in such operation, each party having the right to participate in such project shall be bound by the terms of such proposal and shall be obligated to pay its proportionate share of the costs of the proposed project as if it had consented to such project pursuant to the terms of the proposal.

E. Abandonment of Wells:

1. Abandonment of Dry Holes: Except for any well drilled or Deepened pursuant to Article VI.B.2. and which has been drilled or Deepened under the consent of all parties entitled to participate in the cost thereof, or deemed pursuant to the provisions of Article VI.B.2. to have been drilled or Deepened with the consent of all such parties, or a well which has been Completed as a producer, no well shall be plugged and abandoned without the consent of all parties; provided, that should Operator desire to abandon a well and all parties entitled to participate in the cost thereof do not consent, Operator shall give notice of such proposed abandonment (together with copies of the logs and other data in its possession) to all such parties entitled to participate in the cost thereof who did not consent. If all parties entitled to participate in the cost thereof do not, within forty-eight (48) hours (exclusive of Saturday, Sunday and legal holidays) after receipt of such notice, elect in writing to take over the well for the purpose of Completing or Reworking it as a producer, Operator shall plug and abandon the well and the parties consenting to the abandonment shall be responsible for all costs of plugging and abandonment. Each party shall bear its proportionate share of the cost of any well which it elects to take over but shall receive proportionate credit for all equipment salvaged from the well. Any party taking over a well agrees to indemnify Operator and the other parties against liability for any subsequent drilling, operations or production.

plugged and abandoned without the consent of all parties. Should Operator, after diligent effort, be unable to contact any party, or should any party fail to reply within forty-eight (48) hours (exclusive of Saturday, Sunday and legal holidays) after delivery of notice of the proposal to plug and abandon such well, such party shall be deemed to have consented to the proposed abandonment. All such wells shall be plugged and abandoned in accordance with applicable regulations and at the cost, risk and expense of the parties who participated in the cost of drilling or Deepening such well. Any party who objects to plugging and abandoning such well by notice delivered to Operator within forty-eight (48) hours (exclusive of Saturday, Sunday and legal holidays) after delivery of notice of the proposed plugging shall take over the well as of the end of such forty-eight (48) hour notice period and conduct further operations in search of Oil and/or Gas subject to the provisions of Article VI.B.; failure of such party to provide proof reasonably satisfactory to Operator of its financial capability to conduct such operations or to take over the well within such period or thereafter to conduct operations on such well or plug and abandon such well shall entitle Operator to retain or take possession of the well and plug and abandon the well. The party taking over the well shall indemnify Operator (if Operator is an abandoning party) and the other abandoning parties against liability for any further operations conducted on such well except for the costs of plugging and abandoning the well and restoring the surface, for which the abandoning parties shall remain proportionately liable.

2. Abandonment of Wells That Have Produced: Except for any well in which a Non-Consent operation has been conducted hereunder for which the Consenting Parties have not been fully reimbursed as herein provided, any well which has been completed as a producer shall not be plugged and abandoned without the consent of all parties. If all parties consent to such abandonment, the well shall be plugged and abandoned in accordance with applicable regulations and at the cost, risk and expense of all the parties hereto. Failure of a party to reply within sixty (60) days of delivery of notice of proposed abandonment shall be deemed an election to consent to the proposal. If, within sixty (60) days after delivery of notice of the proposed abandonment of any well, all parties do not agree to the abandonment of such well, those wishing to continue its operation from the Zone then open to production shall be obligated to take over the well as of the expiration of the applicable notice period and shall indemnify Operator (if Operator is an abandoning party) and the other abandoning parties against liability for any further operations on the well conducted by such parties. Failure of such party or parties to provide proof reasonably satisfactory to Operator of their financial capability to conduct such operations or to take over the well within the required period or thereafter to conduct operations on such well shall entitle operator to retain or take possession of such well and plug and abandon the well.

Parties taking over a well as provided herein shall tender to each of the other parties its proportionate share of the value of the well's salvable material and equipment, determined in accordance with the provisions of Exhibit "C," less the estimated cost of salvaging and the estimated cost of plugging and abandoning and restoring the surface; provided, however, that in the event the estimated plugging and abandoning and surface restoration costs and the estimated cost of salvaging are higher than the value of the well's salvable material and equipment, each of the abandoning parties shall tender to the parties continuing operations their proportionate shares of the estimated excess cost. Each abandoning party shall assign to the non-abandoning parties, without warranty, express or implied, as to title or as to quantity, or fitness for use of the equipment and material, all of its interest in the wellbore of the well and related equipment, together with its interest in the Leasehold insofar and only insofar as such Leasehold covers the right to obtain production from that wellbore in the Zone then open to production. If the interest of the abandoning party is or includes and Oil and Gas Interest, such party shall execute and deliver to the non-abandoning party or parties an oil and gas lease, limited to the wellbore and the Zone then open to production, for a term of one (1) year and so long thereafter as Oil and/or Gas is produced from the Zone covered thereby, such lease to be on the form attached as Exhibit "B." The assignments or leases so limited shall encompass the Drilling Unit upon which the well is located. The payments by, and the assignments or leases to, the assignees shall be in a ratio based upon the relationship of their respective percentage of participation in the Contract Area to the aggregate of the percentages of participation in the Contract Area of all assignees. There shall be no readjustment of interests in the remaining portions of the Contract Area.

Thereafter, abandoning parties shall have no further responsibility, liability, or interest in the operation of or production from the well in the Zone then open other than the royalties retained in any lease made under the terms of this Article. Upon request, Operator shall continue to operate the assigned well for the account of the non-abandoning parties at the rates and charges contemplated by this agreement, plus any additional cost and charges which may arise as the result of the separate ownership of the assigned well. Upon proposed abandonment of the producing Zone assigned or leased, the assignor or lessor shall then have the option to repurchase its prior interest in the well (using the same valuation formula) and participate in further operations therein subject to the provisions hereof.

3. Abandonment of Non-Consent Operations: The provisions of Article VI.E.1. or VI.E.2. above shall be applicable as between Consenting Parties in the event of the proposed abandonment of any well excepted from said Articles; provided, however, no well shall be permanently plugged and abandoned unless and until all parties having the right to conduct further operations therein have been notified of the proposed abandonment and afforded the opportunity to elect to take over the well in accordance with the provisions of this Article VI.E.; and provided further, that Non Consenting Parties who own an interest in a portion of the well shall pay their proportionate shares of abandonment and surface restoration cost for such well as provided in Article VI.B.2.a&b.

F. Termination of Operations:

Upon the commencement of an operation for the drilling, Reworking, Sidetracking, Plugging Back, Deepening, testing, Completion or plugging of a well, including but not limited to the Initial Well, such operation shall not be terminated without consent of parties bearing 100 ___% of the costs of such operation provided, however, that in the event granite or other practically impenetrable substance or condition in the hole is encountered which renders further operations impractical, Operator may discontinue operations and give notice of such condition in the manner provided in Article VI.B.1. and the provisions of Article VI.B. or VI.E. shall thereafter apply to such operation, as appropriate.

G. Taking Production in Kind:

☐ Option No. 1: Gas Balancing Agreement Attached

Each party shall take in kind or separately dispose of its proportionate share of all Oil and Gas produced from the Contract Area, exclusive of production which may be used in development and producing operations and in preparing and treating Oil and Gas for marketing purposes and production unavoidably lost. Any extra expenditure incurred in the taking in kind or separate disposition by any party of its proportionate share of the production shall be borne by such party. Any party taking its share of production in kind shall be required to pay for only its proportionate share of such part of Operator's surface facilities which it uses.

Each party shall execute such division orders and contracts as may be necessary for the sale of its interest in production from the Contract Area, and, except as provided in Article VI.B., shall be entitled to receive payment

directly from the purchaser thereof for its share of all production.

If any party fails to make the arrangements necessary to take in kind or separately dispose of its proportionate share of the Oil produced from the Contract Area, Operator shall have the right, subject to the revocation at will by the party owning it, but not the obligation, to purchase such Oil or sell it to others at any time and from time to time, for the account of the non-taking party. Any such purchase or sale by Operator may be terminated by Operator upon at least ten (10) days written notice to the owner of said production and shall be subject always to the right of the owner of the production upon at least ten (10) days written notice to Operator to exercise at any time its right to take in kind, or separately dispose of, its share of all Oil not previously delivered to a purchaser. Any purchase or sale by Operator of any other party's share of Oil shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one (1) year.

Any such sale by Operator shall be in a manner commercially reasonable under the circumstances but Operator shall have no duty to share any existing market or to obtain a price equal to that received under any existing market. The sale or delivery by Operator of a non-taking party's share of Oil under the terms of any existing contract of Operator shall not give the non-taking party any interest in or make the non-taking party a party to said contract. No purchase shall be made by Operator without first giving the non-taking party at least ten (10) days written notice of such intended purchase and the price to be paid or the pricing basis to be used.

All parties shall give timely written notice to Operator of their Gas marketing arrangements for the following month, excluding price, and shall notify Operator immediately in the event of a change in such arrangements. Operator shall maintain records of all marketing arrangements, and of volumes actually sold or transported, which records shall be made available to Non-Operators upon reasonable request.

In the event one or more parties' separate disposition of its share of the Gas causes split-stream deliveries to separate pipelines and/or deliveries which on a day-to-day basis for any reason are not exactly equal to a party's respective proportionate share of total Gas sales to be allocated to it, the balancing or accounting between the parties shall be in accordance with any Gas balancing agreement between the parties hereto, whether such an agreement is attached as Exhibit "E" or is a separate agreement. Operator shall give notice to all parties of the first sales of Gas from any well under this agreement.

☒ Option No. 2: No Gas Balancing Agreement:

Each party shall take in kind or separately dispose of its proportionate share of all Oil and Gas produced from the Contract Area, exclusive of production which may be used in development and producing operations and in preparing and treating Oil and Gas for marketing purposes and production unavoidably lost. Any extra expenditures incurred in the taking in kind or separate disposition by any party of its proportionate share of the production shall be borne by such party. Any party taking its share of production in kind shall be required to pay for only its proportionate share of such part of Operator's surface facilities which it uses.

Each party shall execute such division orders and contracts as may be necessary for the sale of its interest in production from the Contract Area, and, except as provided in Article VII.B., shall be entitled to receive payment directly from the purchaser thereof for its share of all production.

If any party fails to make the arrangements necessary to take in kind or separately dispose of its proportionate share of the Oil and/or Gas produced from the Contract Area, Operator shall have the right, subject to the revocation at will by the party owning it, but not the obligation, to purchase such Oil and/or Gas or sell it to others at any time and from time to time, for the account of the non-taking party. Any such purchase or sale by Operator may be terminated by Operator upon at least ten (10) days written notice to the owner of said production and shall be subject always to the right of the owner of the production upon at least ten (10) days written notice to Operator to exercise its right to take in kind, or separately dispose of, its share of all Oil and/or Gas not previously delivered to a purchaser; provided, however, that the effective date of any such revocation may be deferred at Operator's election for a period not to exceed ninety (90) days if Operator has committed such production to a purchase contract having a term extending beyond such ten (10)-day period. Any purchase or sale by Operator of any other party's share of Oil and/or Gas shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one (1) year.

Any such sale by Operator shall be in a manner commercially reasonable under the circumstances, but Operator shall have no duty to share any existing market or transportation arrangement or to obtain a price or transportation fee equal to that received under any existing market or transportation arrangement. The sale or delivery by Operator of a non-taking party's share of production under the terms of any existing contract of Operator shall not give the non-taking party any interest in or make the non-taking party a party to said contract. No purchase of Oil and Gas and no sale of Gas shall be made by Operator without first giving the non-taking party ten days written notice of such intended purchase or sale and the price to be paid or the pricing basis to be used. Operator shall give notice to all parties of the first sale of Gas from any well under this agreement.

All parties shall give timely written notice to Operator of their Gas marketing arrangements for the following month, excluding price, and shall notify Operator immediately in the event of a change in such arrangements. Operator shall maintain records of all marketing arrangements, and of volumes actually sold or transported, which records shall be made available to Non-Operators upon reasonable request.

ARTICLE VII.

EXPENDITURES AND LIABILITY OF PARTIES

A. Liability of Parties

The liability of the parties shall be several, not joint or collective. Each party shall be responsible only for its obligations, and shall be liable only for its proportionate share of the costs of operating the Contract Area. Accordingly, the liens granted among the parties in Article VII.B. are given to secure only the debts of each severally, and no party shall have any liability to third parties hereunder to satisfy the default of any other party in the payment of any expense or obligation hereunder. It is not the intention of the parties to create, nor shall this agreement be construed as creating, a mining or other partnership, joint venture, agency relationship or association, or to render the parties liable as partners, co-venturers, or principals. In their relations with each other under this agreement, the parties shall not be considered fiduciaries or to have established a confidential relationship but rather shall be free to act on an arm's-length basis in accordance with their own respective self-interest, subject to the express provisions hereof requiring operations to be conducted hereunder with good faith and to act in good faith in their dealings with each other with respect to activities hereunder.

B. Liens and Security Interests:

Each party grants to the other parties hereto a lien upon any interest it now owns or hereafter acquires in Oil and Gas Leases and Oil and Gas Interests in the Contract Area, and a security interest and/or purchase money security interest in any interest it now owns or hereafter acquires in the personal property and fixtures on or used or obtained for use in connection therewith, to secure performance of all of its obligations under this agreement including but not limited to payment of expense, interest and fees, the proper disbursement of all monies paid hereunder, the assignment or relinquishment of interest in Oil and Gas Leases as required hereunder, and the proper performance of operations hereunder. Such lien and security interest granted by each party hereto shall include such party's leasehold interests, working interests, operating rights, and royalty and overriding royalty interests in the Contract Area now owned or hereafter acquired and in lands pooled or unitized therewith or otherwise becoming subject to this agreement, the Oil and Gas when extracted therefrom and equipment situated thereon or used or obtained for use in connection therewith (including, without limitation, all wells, tools, and tubular goods), and accounts (including, without limitation, accounts arising from gas imbalances or from the sale of Oil and/or Gas at the wellhead), contract rights, inventory and general intangibles relating thereto or arising therefrom, and all proceeds and products of the foregoing.

To perfect the lien and security agreement provided herein, each party hereto shall execute and acknowledge the recording supplement and/or any financing statement prepared and submitted by any party hereto in conjunction herewith or at any time following execution hereof, and Operator is authorized to file this agreement or the recording supplement executed herewith as a lien or mortgage in the applicable real estate records and as a financing statement with the proper officer under the Uniform Commercial Code in the state in which the Contract Area is situated and such other states as Operator shall deem appropriate to perfect the security interest granted hereunder. Any party may file this agreement, the recording supplement executed herewith, or such other documents as it deems necessary as a lien or mortgage in the applicable real estate records and/or a financing statement with the proper officer under the Uniform Commercial Code.

Each party represents and warrants to the other parties hereto that the lien and security interest granted by such party to the other parties shall be a first and prior lien, and each party hereby agrees to maintain the priority of said lien and security interest against all persons acquiring an interest in Oil and Gas Leases and Interests covered by this agreement by, through or under such party. All parties acquiring an interest in Oil and Gas Leases and Oil and Gas Interests covered by this agreement, whether by assignment, merger, mortgage, operation of law, or otherwise, shall be deemed to have taken subject to the lien and security interest granted by this Article VII.B. as to all obligations attributable to such interest hereunder whether or not such obligations arise before or after such interest is acquired.

To the extent that parties have a security interest under the Uniform Commercial Code of the state in which the Contract Area is situated, they shall be entitled to exercise the rights and remedies of a secured party under the Code. The bringing of a suit and the obtaining of judgment by a party for the secured indebtedness shall not be deemed an election of remedies or otherwise affect the lien rights or security interest as security for the payment thereof. In addition, upon default by any party in the payment of its share of expenses, interests or fees, or upon the improper use of funds by the Operator, the other parties shall have the right, without prejudice to other rights or remedies, to collect from the purchaser the proceeds from the sale of such defaulting party's share of Oil and Gas until the amount owed by such party, plus interest as provided in "Exhibit C," has been received, and shall have the right to offset the amount owed against the proceeds from the sale of such defaulting party's share of Oil and Gas. All purchasers of production may rely on a notification of default from the non-defaulting party or parties stating the amount due as a result of the default, and all parties waive any recourse available against purchasers for releasing production proceeds as provided in this paragraph.

If any party fails to pay its share of cost within one hundred twenty (120) days after rendition of a statement therefor by Operator, the non-defaulting parties, including Operator, shall upon request by Operator, pay the unpaid amount in the proportion that the interest of each such party bears to the interest of all such parties. The amount paid by each party so paying its share of the unpaid amount shall be secured by the liens and security rights described in Article VII.B., and each paying party may independently pursue any remedy available hereunder or otherwise.

If any party does not perform all of its obligations hereunder, and the failure to perform subjects such party to foreclosure or execution proceedings pursuant to the provisions of this agreement, to the extent allowed by governing law, the defaulting party waives any available right of redemption from and after the date of judgment, any required valuation or appraisement of the mortgaged or secured property prior to sale, any available right to stay execution or to require a marshaling of assets and any required bond in the event a receiver is appointed. In addition to the extent permitted by applicable law, each party hereby grants to the other parties a power of sale as to any property that is subject to the lien and security rights granted hereunder, such power to be exercised in the manner provided by applicable law or otherwise in a commercially reasonable manner and upon reasonable notice.

Each party agrees that the other parties shall be entitled to utilize the provisions of Oil and Gas lien law or other lien law of any state in which the Contract Area is situated to enforce the obligations of each party hereunder. Without limiting the generality of the foregoing, to the extent permitted by applicable law, Non-Operators agree that Operator may invoke or utilize the mechanic's or materialman's lien law of the state in which the Contract Area is situated in order to secure the payment to Operator of any sum due hereunder for services performed or materials supplied by Operator.

C. Advances:

Operator, at its election, shall have the right from time to time to demand and receive from one or more of the other parties payment in advance of their respective shares of the estimated amount of the expense to be incurred in operations hereunder during the next succeeding month, which right may be exercised only by submission to each such party of an itemized statement of such estimated expense, together with an invoice for its share thereof. Each such statement and invoice for the payment in advance of estimated expense shall be submitted on or before the 20th day of the next preceding month. Each party shall pay to Operator its proportionate share of such estimate within fifteen (15) days after such estimate and invoice is received. If any party fails to pay its share of said estimate within said time, the amount due shall bear interest at the rate specified for past due accounts in Exhibit "C" until paid. Proper adjustment shall be made monthly between advances and actual expense to the end that each party shall bear and pay its proportionate share of actual expenses incurred, and no more.

D. Defaults and Remedies:

If any party fails to discharge any financial obligation under this agreement, including without limitation the failure to make any advance under the preceding Article VII.C. or any other provision of this agreement, within the period required for such payment hereunder, then in addition to the remedies provided in Article VII.B. or elsewhere in this agreement, the remedies specified below shall be applicable. For purposes of this Article VII.D., all notices and elections shall be delivered

only by Operator, except that Operator shall deliver any such notice and election requested by a non-defaulting Non-Operator, and when Operator is the party in default, the applicable notices and elections can be delivered by any Non-Operator. Election of any one or more of the following remedies shall not preclude the subsequent use of any other remedy specified below or otherwise available to a non-defaulting party.

1. Suspension of Rights: Any party may deliver to the party in default a Notice of Default, which shall specify the default, specify the action to be taken to cure the default, and specify that failure to take such action will result in the exercise of one or more of the remedies provided in this Article. If the default is not cured within thirty (30) days of the delivery of such Notice of Default, all of the rights of the defaulting party granted by this agreement may upon notice be suspended until the default is cured, without prejudice to the right of the non-defaulting party or parties to continue to enforce the obligations of the defaulting party previously accrued or thereafter accruing under this agreement. If Operator is the party in default, the Non-Operators shall have in addition the right, by vote of Non-Operators owning a majority in interest in the Contract Area after excluding the voting interest of Operator, to appoint a new Operator effective immediately. The rights of a defaulting party that may be suspended hereunder at the election of the non-defaulting parties shall include, without limitation, the right to receive information as to any operation conducted hereunder during the period of such default, the right to elect to participate in an operation proposed under Article VI.B. of this agreement, the right to participate in an operation being conducted under this agreement even if the party has previously elected to participate in such operation, and the right to receive proceeds of production from any well subject to this agreement.

2. Suit for Damages: Non-defaulting parties or Operator for the benefit of non-defaulting parties may sue (at joint account expense) to collect the amounts in default, plus interest accruing on the amounts recovered from the date of default until the date of collection at the rate specified in Exhibit "C" attached hereto. Nothing herein shall prevent any party from suing any defaulting party to collect consequential damages accruing to such party as a result of the default.

3. Deemed Non-Consent: The non-defaulting party may deliver a written Notice of Non-Consent Election to the defaulting party at any time after the expiration of the thirty-day cure period following delivery of the Notice of Default, in which event if the billing is for the drilling a new well or the Plugging Back, Sidetracking, Reworking or Deepening of a well which is to be or has been plugged as a dry hole, or for the Completion or Recompletion of any well, the defaulting party will be conclusively deemed to have elected not to participate in the operation and to be a Non-Consenting Party with respect thereto under Article VI.B. or VI.C., as the case may be, to the extent of the costs unpaid by such party, notwithstanding any election to participate theretofore made. If election is made to proceed under this provision, then the non-defaulting parties may not elect to sue for the unpaid amount pursuant to Article VII.D.2.

Until the delivery of such Notice of Non-Consent Election to the defaulting party, such party shall have the right to cure its default by paying its unpaid share of costs plus interest at the rate set forth in Exhibit "C," provided, however, such payment shall not prejudice the rights of the non-defaulting parties to pursue remedies for damages incurred by the non-defaulting parties as a result of the default. Any interest relinquished pursuant to this Article VII.D.3. shall be offered to the non-defaulting parties in proportion to their interests, and the non-defaulting parties electing to participate in the ownership of such interest shall be required to contribute their shares of the defaulted amount upon their election to participate therein.

4. Advance Payment: If a default is not cured within thirty (30) days of the delivery of a Notice of Default, Operator, or Non-Operators if Operator is the defaulting party, may thereafter require advance payment from the defaulting party of such defaulting party's anticipated share of any item of expense for which Operator, or Non-Operators, as the case may be, would be entitled to reimbursement under any provision of this agreement, whether or not such expense was the subject of the previous default. Such right includes, but is not limited to, the right to require advance payment for the estimated costs of drilling a well or Completion of a well as to which an election to participate in drilling or Completion has been made. If the defaulting party fails to pay the required advance payment, the non-defaulting parties may pursue any of the remedies provided in the Article VII.D. or any other default remedy provided elsewhere in this agreement. Any excess of funds advanced remaining when the operation is completed and all costs have been paid shall be promptly returned to the advancing party.

5. Costs and Attorneys' Fees: In the event any party is required to bring legal proceedings to enforce any financial obligation of a party hereunder, the prevailing party in such action shall be entitled to recover all court costs, costs of collection, and a reasonable attorney's fee, which the lien provided for herein shall also secure.

E. Rentals, Shut-in Well Payments and Minimum Royalties:

Rentals, shut-in well payments and minimum royalties which may be required under the terms of any lease shall be paid by the party or parties who subjected such lease to this agreement at its or their expense. In the event two or more parties own and have contributed interests in the same lease to this agreement, such parties may designate one of such parties to make said payments for and on behalf of all such parties. Any party may request, and shall be entitled to receive, proper evidence of all such payments. In the event of failure to make proper payment of any rental, shut-in well payment or minimum royalty through mistake or oversight where such payment is required to continue the lease in force, any loss which results from such non-payment shall be borne in accordance with the provisions of Article IV.B.2.

Operator shall notify Non-Operators of the anticipated completion of a shut-in well, or the shutting in or return to production of a producing well, at least five (5) days (excluding Saturday, Sunday, and legal holidays) prior to taking such action, or at the earliest opportunity permitted by circumstances, but assumes no liability for failure to do so. In the event of failure by Operator to so notify Non-Operators, the loss of any lease contributed hereto by Non-Operators for failure to make timely payments of any shut-in well payment shall be borne jointly by the parties hereto under the provisions of Article IV.B.2.

F. Taxes:

Beginning with the first calendar year after the effective date hereof, Operator shall render for ad valorem taxation all property subject to this agreement which by law should be rendered for such taxes, and it shall pay all such taxes assessed thereon before they become delinquent. Prior to the rendition date, each Non-Operator shall furnish Operator information as to burdens (to include, but not be limited to, royalties, overriding royalties and production payments) on Leases and Oil and Gas Interests contributed by such Non-Operator. If the assessed valuation of any Lease is reduced by reason of its being subject to outstanding excess royalties, overriding royalties or production payments, the reduction in ad valorem taxes resulting therefrom shall inure to the benefit of the owner or owners of such Lease, and Operator shall adjust the charge to such owner or owners so as to reflect the benefit of such reduction. If the ad valorem taxes are based in whole or in part upon separate valuations of each party's working interest, then notwithstanding anything to the contrary herein, charges to the joint account shall be made and paid by the parties hereto in accordance with the tax value generated by each party's working interest. Operator shall bill the other parties for their proportionate shares of all tax payments in the manner provided in Paragraph 7

If Operator considers any tax assessment improper, Operator may, at its discretion, protest within the time and manner prescribed by law, and prosecute the protest to a final determination, unless all parties agree to abandon the protest prior to final determination. During the pendency of administrative or judicial proceedings, Operator may elect to pay, under protest, all such taxes and any interest and penalty. When any such protested assessment shall have been finally determined, Operator shall pay the tax for the joint account, together with any interest and penalty accrued, and the total cost shall then be assessed against the parties, and be paid by them, as provided in Exhibit "C."

Each party shall pay or cause to be paid all production, severance, excise, gathering and other taxes imposed upon or with respect to the production or handling of such party's share of Oil and Gas produced under the terms of this agreement.

ARTICLE VIII.
ACQUISITION, MAINTENANCE OR TRANSFER OF INTEREST

A. Surrender of Leases:

The Leases covered by this agreement, insofar as they embrace acreage in the Contract Area, shall not be surrendered in whole or in part unless all parties consent thereto.

However, should any party desire to surrender its interest in any Lease or in any portion thereof, such party shall give written notice of the proposed surrender to all parties, and the parties to whom such notice is delivered shall have thirty (30) days after delivery of the notice within which to notify the party proposing the surrender whether they elect to consent thereto. Failure of a party to whom such notice is delivered to reply within said 30-day period shall constitute a consent to the surrender of the Leases described in the notice. If all parties do not agree or consent thereto, the party desiring to surrender shall assign, without express or implied warranty of title, all of its interest in such Lease, or portion thereof, and any well, material and equipment which may be located thereon and any rights in production thereafter secured, to the parties not consenting to such surrender. If the interest of the assigning party is or includes an Oil and Gas Interest, the assigning party shall execute and deliver to the party or parties not consenting to such surrender an oil and gas lease covering such Oil and Gas Interest for a term of one (1) year and so long thereafter as Oil and/or Gas is produced from the land covered thereby, such lease to be on the form attached hereto as Exhibit "B." Upon such assignment or lease, the assigning party shall be relieved from all obligations thereafter accruing, but not theretofore accrued, with respect to the interest assigned or leased and the operation of any well attributable thereto, and the assigning party shall have no further interest in the assigned or leased premises and its equipment and production other than the royalties retained in any lease made under the terms of this Article. The party assignee or lessee shall pay to the party assignor or lessor the reasonable salvage value of the latter's interest in any well's salvable materials and equipment attributable to the assigned or leased acreage. The value of all salvable materials and equipment shall be determined in accordance with the provisions of Exhibit "C," less the estimated cost of salvaging and the estimated cost of plugging and abandoning and restoring the surface. If such value is less than such costs, then the party assignor or lessor shall pay to the party assignee or lessee the amount of such deficit. If the assignment or lease is in favor of more than one party, the interest shall be shared by such parties in the proportions that the interest of each bears to the total interest of all such parties. If the interest of the parties to whom the assignment is to be made varies according to depth, then the interest assigned shall similarly reflect such variances.

Any assignment, lease or surrender made under this provision shall not reduce or change the assignor's, lessor's or surrendering party's interest as it was immediately before the assignment, lease or surrender in the balance of the Contract Area; and the acreage assigned, leased or surrendered, and subsequent operations thereon, shall not thereafter be subject to the terms and provisions of this agreement but shall be deemed subject to an Operating Agreement in the form of this agreement.

B. Renewal or Extension of Leases:

If any party secures a renewal or replacement of an Oil and Gas Lease or interest subject to this agreement, then all other parties shall be notified promptly upon such acquisition or, in the case of a replacement Lease taken before expiration of an existing Lease, promptly upon expiration of the existing Lease. The parties notified shall have the right for a period of thirty (30) days following delivery of such notice in which to elect to participate in the ownership of the renewal or replacement Lease, insofar as such Lease affects lands within the Contract Area, by paying to the party who acquired it their proportionate shares of the acquisition cost allocated to that part of such Lease within the Contract Area, which shall be in proportion to the interest held at that time by the parties in the Contract Area. Each party who participates in the purchase of a renewal or replacement Lease shall be given an assignment of its proportionate interest therein by the acquiring party.

If some, but less than all, of the parties elect to participate in the purchase of a renewal or replacement Lease, it shall be owned by the parties who elect to participate therein, in a ratio based upon the relationship of their respective percentage of participation in the Contract Area to the aggregate of the percentages of participation in the Contract Area of all parties participating in the purchase of such renewal or replacement Lease. The acquisition of a renewal or replacement Lease by any or all of the parties hereto shall not cause a readjustment of the interests of the parties stated in Exhibit "A," but any renewal or replacement Lease in which less than all parties elect to participate shall not be subject to this agreement but shall be deemed subject to a separate Operating Agreement in the form of this agreement.

If the interests of the parties in the Contract Area vary according to depth, then their right to participate proportionately in renewal or replacement Leases and their right to receive an assignment of interest shall also reflect such depth variances.

The provisions of this Article shall apply to renewal or replacement Leases whether they are for the entire interest covered by the expiring Lease or cover only a portion of its area or an interest therein. Any renewal or replacement Lease taken before the expiration of its predecessor Lease, or taken or contracted for or becoming effective within six (6) months after the expiration of the existing Lease, shall be subject to this provision so long as this agreement is in effect at the time of such acquisition or at the time the renewal or replacement Lease becomes effective; but any Lease taken or contracted for more than six (6) months after the expiration of an existing Lease shall not be deemed a renewal or replacement Lease and shall not be subject to the provisions of this agreement.

The provisions in this Article shall also be applicable to extensions of Oil and Gas Leases.

C. Acreage or Cash Contributions:

While this agreement is in force, if any party contracts for a contribution of cash towards the drilling of a well or any other operation on the Contract Area, such contribution shall be paid to the party who conducted the drilling or other operation and shall be applied by it against the cost of such drilling or other operation. If the contribution be in the form of acreage, the party to whom the contribution is made shall promptly tender an assignment of the acreage, without warranty of title, to the Drilling Parties in the proportions said Drilling Parties shared the cost of drilling the well. Such acreage shall become a separate Contract Area and, to the extent possible, be governed by provisions identical to this agreement. Each party shall promptly notify all other parties of any acreage or cash contributions it may obtain in support of any well or any other operation on the Contract Area. The above provisions shall also be applicable to optional rights to earn acreage outside the Contract Area which are in support of well drilled inside Contract Area.

If any party contracts for any consideration relating to disposition of such party's share of substances produced hereunder, such consideration shall not be deemed a contribution as contemplated in this Article VIII.C.

D. Assignment; Maintenance of Uniform Interest:

For the purpose of maintaining uniformity of ownership in the Contract Area in the Oil and Gas Leases, Oil and Gas Interests, wells, equipment and production covered by this agreement no party shall sell, encumber, transfer or make other disposition of its interest in the Oil and Gas Leases and Oil and Gas Interests embraced within the Contract Area or in wells, equipment and production unless such disposition covers either:

1. the entire interest of the party in all Oil and Gas Leases, Oil and Gas Interests, wells, equipment and production; or

2. an equal undivided percent of the party's present interest in all Oil and Gas Leases, Oil and Gas Interests, wells, equipment and production in the Contract Area.

Every sale, encumbrance, transfer or other disposition made by any party shall be made expressly subject to this agreement and shall be made without prejudice to the right of the other parties, and any transferee of an ownership interest in any Oil and Gas Lease or Interest shall be deemed a party to this agreement as to the interest conveyed from and after the effective date of the transfer of ownership; provided, however, that the other parties shall not be required to recognize any such sale, encumbrance, transfer or other disposition for any purpose hereunder until thirty (30) days after they have received a copy of the instrument of transfer or other satisfactory evidence thereof in writing from the transferor or transferee. No assignment or other disposition of interest by a party shall relieve such party of obligations previously incurred by such party hereunder with respect to the interest transferred, including without limitation the obligation of a party to pay all costs attributable to an operation conducted hereunder in which such party has agreed to participate prior to making such assignment, and the lien and security interest granted by Article VII.B. shall continue to burden the interest transferred to secure payment of any such obligations.

If, at any time the interest of any party is divided among and owned by four or more co-owners, Operator, at its discretion, may require such co-owners to appoint a single trustee or agent with full authority to receive notices, approve expenditures, receive billings for and approve and pay such party's share of the joint expenses, and to deal generally with, and with power to bind, the co-owners of such party's interest within the scope of the operations embraced in this agreement; however, all such co-owners shall have the right to enter into and execute all contracts or agreements for the disposition of their respective shares of the Oil and Gas produced from the Contract Area and they shall have the right to receive, separately, payment of the sale proceeds thereof.

E. Waiver of Rights to Partition:

If permitted by the laws of the state or states in which the property covered hereby is located, each party hereto owning an undivided interest in the Contract Area waives any and all rights it may have to partition and have set aside to it in severalty its undivided interest therein.

F. Preferential Right to Purchase:

~~E. (Optional; Check if applicable)~~

~~Should any party desire to sell all or any part of its interests under this agreement, or its rights and interests in the Contract~~ Area, it shall promptly give written notice to the other parties, with full information concerning its proposed disposition, which shall include the name and address of the prospective transferee (who must be ready, willing and able to purchase), the purchase price, a legal description sufficient to identify the property, and all other terms of the offer. The other parties shall then have an optional prior right, for a period of ten (10) days after the notice is delivered, to purchase for the stated consideration on the same terms and conditions the interest which the other party proposes to sell; and, if this optional right is exercised, the purchasing parties shall share the purchased interest in the proportions that the interest of each bears to the total interest of all purchasing parties. However, there shall be no preferential right to purchase in those cases where any party wishes to mortgage its interests, or to transfer title to its interests to its mortgagee in lieu of or pursuant to foreclosure of a mortgage of its interests, or to dispose of its interests by merger, reorganization, consolidation, or by sale of all or substantially all of its Oil and Gas assets to any party, or by transfer of its interests to a subsidiary or parent company or to a subsidiary of a parent company, or to any ~~company in which such party owns a majority of the stock.~~

ARTICLE IX.
INTERNAL REVENUE CODE ELECTION

If, for federal income tax purposes, this agreement and the operations hereunder are regarded as a partnership, and if the parties have not otherwise agreed to form a tax partnership pursuant to Exhibit "G" or other agreement between them, each party thereby affected elects to be excluded from the application of all of the provisions of Subchapter "K," Chapter 1, Subtitle "A," of the Internal Revenue Code of 1986, as amended (Code), as permitted and authorized by Section 761 of the Code and the regulations promulgated thereunder. Operator is authorized and directed to execute on behalf of each party hereby affected such evidence of this election as may be required by the Secretary of the Treasury of the United States or the Federal Internal Revenue Service, including specifically, but not by way of limitation, all of the returns, statements, and the data required by Treasury Regulation §1.761. Should there be any requirement that each party hereby affected give further evidence of this election, each such party shall execute such documents and furnish such other evidence as may be requested by the Federal Internal Revenue Service or as may be necessary to evidence this election. No such party shall give any notices or take any other action inconsistent with the election made hereby. If any present or future income tax laws of the state or states in which the Contract Area is located or any future income tax laws of the United States contain provisions similar to those in Subchapter "K," Chapter 1, Subtitle "A," of the Code, under which an election similar to that provided by Section 761 of the Code is permitted, each party hereby affected shall make such election as may be permitted or required by such laws. In making the foregoing election, each such party states that the income derived by such party from operations hereunder can be adequately determined without the computation of partnership taxable income.

ARTICLE X.
CLAIMS AND LAWSUITS

Operator may settle any single uninsured third party damage claim or suit arising from operations hereunder if the expenditure [illegible] of any such claim or suit shall be borne by the parties in accordance with their participating interests, provided that no party shall be required to contribute to the amount by which the amount paid in settlement of any such claim or suit exceeds the amount recommended by Operator for such settlement without such party's prior written consent. All other claims and suits may be settled by Operator only with the participation of, and after consultation with, such parties as, in Operator's opinion, are affected thereby. Each party shall promptly notify Operator of any claim or suit in which it is involved that arises from operations hereunder, and no party shall settle any such claim or suit without the consent of Operator unless such authority is delegated to Operator. All costs and expenses of handling, settling, or otherwise discharging such claim or suit shall be a joint expense of the parties participating in the operation from which the claim or suit arises. If a claim is made against any party or if any party is sued on account of any matter arising from operations hereunder over which such individual has no control because of the rights given Operator by this agreement, such party shall immediately notify all other parties, and the claim or suit shall be treated as any other claim or suit involving operations hereunder.

ARTICLE XI.
FORCE MAJEURE

If any party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than the obligation to indemnify or make money payments or furnish security, that party shall give to all other parties prompt written notice of the force majeure with reasonably full particulars concerning it; thereupon, the obligations of the party giving the notice, so far as they are affected by the force majeure, shall be suspended during, but no longer than, the continuance of the force majeure. The term "force majeure," as here employed, shall mean an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightening, fire, storm, flood or other act of nature, explosion, governmental action, governmental delay, restraint or inaction, unavailability of equipment, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the party claiming suspension.

The affected party shall use all reasonable diligence to remove the force majeure situation as quickly as practicable. The requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts, or other labor difficulty by the party involved, contrary to its wishes; how all such difficulties shall be handled shall be entirely within the discretion of the party concerned.

ARTICLE XII.
NOTICES

All notices authorized or required between the parties by any of the provisions of this agreement, unless otherwise specifically provided, shall be in writing and delivered in person or by United States mail, courier service, telegram, telex, telecopier or any other form of facsimile, postage or charges prepaid, and addressed to such parties at the addresses listed on Exhibit "A." All telephone or oral notices permitted by this agreement shall be confirmed immediately thereafter by written notice. The originating notice given under any provision hereof shall be deemed delivered only when received by the party to whom such notice is directed, and the time for such party to deliver any notice in response thereto shall run from the date the originating notice is received. "Receipt" for purposes of this agreement with respect to written notice delivered hereunder shall be actual delivery of the notice to the address of the party to be notified specified in accordance with this agreement, or to the telecopy, facsimile or telex machine of such party. The second or any responsive notice shall be deemed delivered when deposited in the United States mail or at the office of the courier or telegraph service, or upon transmittal by telex, telecopy or facsimile, or when personally delivered to the party to be notified, provided, that when response is required within 24 or 48 hours, such response shall be given orally or by telephone, telex, telecopy or other facsimile within such period. Each party shall have the right to change its address at any time, and from time to time, by giving written notice thereof to all other parties. If a party is not available to receive notice orally or by telephone when a party attempts to deliver a notice required to be delivered within 24 or 48 hours, the notice may be delivered in writing by any other method specified herein and shall be deemed delivered in the same manner provided above for any responsive notice.

ARTICLE XIII.
TERM OF AGREEMENT

This agreement shall remain in full force and effect as to the Oil and Gas Leases and/or Oil and Gas Interests subject hereto for the period of time selected below; provided, however, no party hereto shall ever be construed as having any right, title or interest in or to any Lease or Oil and Gas Interest contributed by any other party beyond the term of this agreement.

☒ Option No. 1: So long as any of the Oil and Gas Leases subject to this agreement remain or are continued in force as to any part of the Contract Area, whether by production, extension, renewal or otherwise.

☐ Option No. 2: In the event the well described in Article VI.A., or any subsequent well drilled under any provision of this agreement, results in the Completion of a well as a well capable of production of Oil and/or Gas in paying quantities, this agreement shall continue in force so long as any such well is capable of production, and for an additional period of _____ days thereafter; provided, however, if, prior to the expiration of such additional period, one or more of the parties hereto are engaged in drilling, Reworking, Deepening, Sidetracking, Plugging Back, testing or attempting to Complete or Re-complete a well or wells hereunder, this agreement shall continue in force until such operations have been completed and if production results therefrom, this agreement shall continue in force as provided herein. In the event the well described in Article VI.A., or any subsequent well drilled hereunder, results in a dry hole, and no other well is capable of producing Oil and/or Gas from the Contract Area, this agreement shall terminate unless drilling, Deepening, Sidetracking, Completing, Re-completing, Plugging Back or Reworking operations are commenced within _____ days from the date of abandonment of said well. "Abandonment" for such purposes shall mean either (i) a decision by all parties not to conduct any further operations on the well or (ii) the elapse of 180 days from the conduct of any operations on the well, whichever first occurs.

The termination of this agreement shall not relieve any party hereto from any expense, liability or other obligation or any remedy therefor which has accrued or attached prior to the date of such termination.

Upon termination of this agreement and the satisfaction of all obligations hereunder, in the event a memorandum of this Operating Agreement has been filed of record, Operator is authorized to file of record in all necessary recording offices a notice of termination, and each party hereto agrees to execute such a notice of termination as to Operator's interest, upon request of Operator, if Operator has satisfied all its financial obligations.

ARTICLE XIV.
COMPLIANCE WITH LAWS AND REGULATIONS

A. Laws, Regulations and Orders:

This agreement shall be subject to the applicable laws of the state in which the Contract Area is located, to the valid rules, regulations, and orders of any duly constituted regulatory body of said state, and to all other applicable federal, state, and local laws, ordinances, rules, regulations and orders.

B. Governing Law:

This agreement and all matters pertaining hereto, including but not limited to matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the law of the state in which the Contract Area is located. If the Contract Area is in two or more states, the law of the state of Texas shall govern.

C. Regulatory Agencies:

Nothing herein contained shall grant, or be construed to grant, Operator the right or authority to waive or release any rights, privileges or obligations which Non-Operators may have under federal or state laws or under rules, regulations or

orders promulgated under such laws in reference to oil, gas and mineral operations, including the location, operation, or production of wells, on tracts offsetting or adjacent to the Contract Area.

With respect to the operations hereunder, Non-Operators agree to release Operator from any and all losses, damages, injuries, claims and causes of action arising out of, incident to or resulting directly or indirectly from Operator's interpretation or application of rules, rulings, regulations or orders of the Department of Energy or Federal Energy Regulatory Commission or predecessor or successor agencies to the extent such interpretation or application was made in good faith and does not constitute gross negligence. Each Non-Operator further agrees to reimburse Operator for such Non-Operator's share of production or any refund, fine, levy or other governmental sanction that Operator may be required to pay as a result of such an incorrect interpretation or application, together with interest and penalties thereon owing by Operator as a result of such incorrect interpretation or application.

ARTICLE XV.
MISCELLANEOUS

A. Execution:

This agreement shall be binding upon each Non-Operator when this agreement or a counterpart thereof has been executed by such Non-Operator and Operator notwithstanding that this agreement is not then or thereafter executed by all of the parties to which it is tendered or which are listed on Exhibit "A" as owning an interest in the Contract Area or which own, in fact, an interest in the Contract Area. Operator may, however, by written notice to all Non-Operators who have become bound by this agreement as aforesaid, given at any time prior to the actual spud date of the Initial Well but in no event later than five days prior to the date specified in Article VI.A. for commencement of the Initial Well, terminate this agreement if Operator in its sole discretion determines that there is insufficient participation to justify commencement of drilling operations. In the event of such a termination by Operator, all further obligations of the parties hereunder shall cease as of such termination. In the event any Non-Operator has advanced or prepaid any share of drilling or other costs hereunder, all sums so advanced shall be returned to such Non-Operator without interest. In the event Operator proceeds with drilling operations for the Initial Well without the execution hereof by all persons listed on Exhibit "A" as having a current working interest in such well, Operator shall indemnify Non-Operators with respect to all costs incurred for the Initial Well which would have been charged to such person under this agreement if such person had executed the same and Operator shall receive all revenues which would have been received by such person under this agreement if such person had executed the same.

B. Successors and Assigns:

This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, legal representatives, successors and assigns, and the terms hereof shall be deemed to run with the Leases or interests included within the Contract Area.

C. Counterparts:

This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes.

D. Severability:

For the purposes of assuming or rejecting this agreement as an executory contract pursuant to federal bankruptcy laws, this agreement shall not be severable, but rather must be assumed or rejected in its entirety, and the failure of any party to this agreement to comply with all of its financial obligations provided herein shall be a material default.

ARTICLE XVI.
OTHER PROVISIONS

A.A.P.L. FORM 610 - MODEL FORM OPERATING AGREEMENT - 1989

IN WITNESS WHEREOF, this agreement shall be effective as of the 15th day of January, 2001.

_____, who has prepared and circulated this form for execution, represents and warrants that the form was printed from and, with the exception(s) listed below, is identical to the AAPL Form 610-1989 Model Form Operating Agreement, as published in computerized form by Forms On-A-Disk, Inc. No changes, alterations, or modifications, other than those made by strikethrough and/or insertion and that are clearly recognizable as changes in Articles _____, have been made to the form.

ATTEST OR WITNESS:

OPERATOR

CDX GAS, L.L.C.

_____

By X John C. Erlund

_____

John C. Erlund

Type or print name

Title President

Date 1/15/01

Tax ID or S.S. No. 75-2740450

NON-OPERATORS

Retamco Operating

_____

By Steve Gose President

_____

Steve Gose

Type or print name

Title PRESIDENT

Date JANUARY 15, 2001

Tax ID or S.S. No. 74-2268917

_____

By _____

_____

Type or print name

Title _____

Date _____

Tax ID or S.S. No. _____

_____

By _____

_____

Type or print name

Title _____

Date _____

Tax ID or S.S. No. _____

EXHIBIT A

Gusher

Lessor	Lessee	Description	County	State	Dated	Effective	Recorded
UINTAH COUNTY UTAH							
USA - UTU 76280 UT-01-09	Retamco Operating Inc.	Township 6 South, Range 23 East, S.L.B.M 5: Lot 4 29: S2 30: ALL 31: ALL	Uintah County	Utah	4-1-97	4-1-97	76280 3-10-97
Utah - ML 47547 UT-01-16	Retamco Operating Inc.	Township 6 South, Range 19 East, S.L.B.M 10: E2SE 11: SWSW 16: Lots 1, 4, NENE	Uintah County	Utah	4-16-97	5-1-97	47547 4-16-97
Utah - ML 47548 UT-01-17	Retamco Operating Inc.	Township 6 South, Range 19 East, S.L.B.M 2: SESE	Uintah County	Utah	4-16-97	5-1-97	47548 4-16-97
Utah - ML 47549 UT-01-18	Retamco Operating Inc.	Township 6 South, Range 21 East, S.L.B.M 2: Lots 1,2,3,4,5,6, E2SW, SE (All)	Uintah County	Utah	4-16-97	5-1-97	47549 4-16-97
USA - UTU 77355 UT-01-114	Retamco Operating Inc.	Township 6 South, Range 20 East, S.L.B.M 6: Lot 1, SENE, E2SE 7: E2NE 8: N2NE, SWNE, NW 9: NE, N2NW 10: SENW 15: NW, N2SW, SWSE 22: W2NE, NWSW 23: SWSW	Uintah County	Utah	8-1-98	8-1-98	77355 8-1-98
USA - UTU 76487 UT-01-115	Retamco Operating Inc.	Township 6 South, Range 19 East, S.L.B.M 15: Tract 49	Uintah County	Utah	7-1-97	7-1-97	76487 5-19-97
USA - UTU 76488 UT-01-116	Retamco Operating Inc.	Township 7 South, Range 19 East, S.L.B.M 1: Lots 1, 2, 3, 4, S2N2, SW, W2SE, SESE 11: Lots 1, 2 12: Lots 1, 2, 3, NENE, S2NE, E2SW, SE 13: ALL 24: ALL	Uintah County	Utah	7-1-97	7-1-97	76488 5-19-97

EXHIBIT A

Lessor	Lessee	Description	County	State	Dated	Effective	Recorded
USA - U[illegible] UT-01-119	Retamco Operating Inc.	Township 5 South, Range 20 East, S.L.B.M 13: ALL 14: ALL 23: N2, N2SW, SESW, SE 25: N2NW, SWNW	Uintah County	Utah	7-1-97	7-1-97	76494 5-19-97
USA - UTU [illegible]96 UT-01-120	Retamco Operating Inc.	Township 6 South, Range 20 East, S.L.B.M 34: S2NE, N2NW, SENW, N2SE, SESE 35: S2	Uintah County	Utah	7-1-97	7-1-97	76496 5-19-97
USA - UTU 76498 UT-01-121	Retamco Operating Inc.	Township 8 South, Range 20 East, S.L.B.M 3: ALL 4: Lots 1, 2, 3, 4, S2N2 5: Lots 3, 4, 6, 7, SWSE 6: Lot 1 9: NE 10: W2NW 17: Lots 1, 2	Uintah County	Utah	7-1-97	7-1-97	76498 5-19-97
USA - UTU [illegible]504 UT-01-122	Retamco Operating Inc.	Township 6 South, Range 21 East, S.L.B.M 11: NWNW, SWSW 15: ALL	Uintah County	Utah	7-1-97	7-1-97	76504 5-19-97
USA - UTU [illegible]506 UT-01-123	Retamco Operating Inc.	Township 6 South, Range 22 East, S.L.B.M 21: ALL 22: W2SW 24: SESE	Uintah County	Utah	7-1-97	7-1-97	76506 5-19-97
USA - UTU [illegible]509 UT-01-124	Retamco Operating Inc.	Township 6 South, Range 23 East, S.L.B.M 33: ALL	Uintah County	Utah	7-1-97	7-1-97	76509 5-19-97
USA - UTU 76765 UT-01-125	Retamco Operating Inc.	Township 6 South, Range 21 East, S.L.B.M 6: Lots 1, 2, 3, 4, 5, 6, 7, S2NE, SENW, E2SW 12: Lots 1, 2, 7, 8, S2 13: Lots 13, 14, 15, W2SW, SESW, S2SE	Uintah County	Utah	9-5-97	10-1-97	76765 10-1-97

EXHIBIT A

Lessor	Lessee	Description	County	State	Dated	Effective	Recorded
USA - UTU [illegible] UT-01-131	Retamco Operating Inc.	Township 6 South, Range 22 East, S.L.B.M 7: Lots 11, 12, 13, 14, W2SE, SESE 8: Lots 9, 10 17: W2NE, SENE, W2, SE 18: Lots 5, 6, 7, 8, 9, E2, E2SW 19: Lots 2, 3, 5, S2NE, SENW, E2SW, SE 20: SWNW, SW, S2SE 30: Lots 5, 6, NE, E2NW	Uintah County	Utah	9-5-97	10-1-97	76768 10-1-97
Utah - ML [illegible] UT-01-13[illegible]	Lane Lasrich	Township 6 South, Range 23 East, S.L.B.M 32: ALL	Uintah County	Utah	11-5-97	12-1-97	47777 10-27-97
USA - UT[illegible] UT-01-13[illegible]	Tamarack Energy Inc.	Township 6 South, Range 21 East, S.L.B.M 33: W2NE, NW, NESW, SE	Uintah County	Utah	10-8-74	11-1-96	28212 10-8-74
USA - UT[illegible] UT-01-135[illegible]	Tamarack Energy Inc.	Township 6 South, Range 21 East, S.L.B.M 33: W2NW	Uintah County	Utah	10-8-74	11-1-96	28212b 6-1-99
USA - UT[illegible] UT-01-13[illegible]	Tamarack Energy Inc.	Township 5 South, Range 19 East, S.L.B.M 33: ALL	Uintah County	Utah	8-1-67	8-1-97	3575 8-1-67
Utah - ML [illegible] UT-01-13[illegible]	Tamarack Energy Inc.	Township 5 South, Range 19 East, S.L.B.M 32: Lot 1	Uintah County	Utah	10-5-94	11-1-94	46685 10-5-94
Sam Oil, Inc. UT-01-138m	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2	Uintah County	Utah	11-12-90	11-12-96	495/750 11-21-90
California [illegible] Development Co. UT-01-138a	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2 6: Lots 2, 3, 4, 5, SENW, SE 7: SE 8: Lot 4, SESW	Uintah County	Utah	3-11-71	3-11-97	168/337 5-13-71
Glenn J. Huber and Shirley B. Huber, husband and wife and Kenneth Huber and Joe Ann Huber, husband and wife UT-01-139[illegible]	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2 6: Lots 2, 3, 4, 5, SENW, E2SE 7: E2SE 8: Lot 4, SESW	Uintah County	Utah	10-30-67	10-30-97	141/477 11-1-87

January 15, 2001
OPERATING AGREEMENT

EXHIBIT A

CDX Rockies, L.L.C. Operator — Retamco Operating, Inc. Non Operator —

Lessor	Lessee	Description	County	State	Dated	Effective	Recorded
UINTAH COUNTY UTAH							
USA - UTU 76280 UT-01-09	Retamco Operating Inc.	Township 6 South, Range 23 East, S.L.B.M 5: Lot 4 29: S2 30: ALL 31: ALL	Uintah County	Utah	4-1-97	4-1-97	76280 3-10-97
Utah - ML 47547 UT-01-16	Retamco Operating Inc.	Township 5 South, Range 19 East, S.L.B.M 10: E2SE 11: SWSW 16: Lots 1, 4, NENE	Uintah County	Utah	4-16-97	5-1-97	47547 4-16-97
Utah - ML 47548 UT-01-17	Retamco Operating Inc.	Township 6 South, Range 19 East, S.L.B.M 2: SESE	Uintah County	Utah	4-16-97	5-1-97	47548 4-16-97
Utah - ML 47549 UT-01-18	Retamco Operating Inc.	Township 6 South, Range 21 East, S.L.B.M 2: Lots 1,2,3,4,5,6, E2SW, SE (All)	Uintah County	Utah	4-16-97	5-1-97	47549 4-16-97
USA - UTU 77355 UT-01-114	Retamco Operating Inc.	Township 5 South, Range 20 East, S.L.B.M 6: Lot 1, SENE, E2SE 7: E2NE 8: N2NE, SWNE, NW 9: NE, N2NW 10: SENW 15: NW, N2SW, SWSE 22: W2NE, NWSW 23: SWSW	Uintah County	Utah	8-1-98	8-1-98	77355 8-1-98
USA - UTU 76487 UT-01-115	Retamco Operating Inc.	Township 6 South, Range 19 East, S.L.B.M 15: Tract 49	Uintah County	Utah	7-1-97	7-1-97	76487 5-19-97
USA - UTU 76488 UT-01-116	Retamco Operating Inc.	Township 7 South, Range 19 East, S.L.B.M 1: Lots 1, 2, 3, 4, S2N2, SW, W2SE, SESE 11: Lots 1, 2 12: Lots 1, 2, 3, NENE, S2NE, E2SW, SE 13: ALL 24: ALL	Uintah County	Utah	7-1-97	7-1-97	76488 5-19-97

EXHIBIT A

Lessor	Lessee	Description	County	State	Dated	Effective	Recorded
USA - UTU [illegible] UT-01-119	Retamco Operating Inc.	Township 5 South, Range 20 East, S.L.B.M 13: ALL 14: ALL 23: N2, N2SW, SESW, SE 25: N2NW, SWNW	Uintah County	Utah	7-1-97	7-1-97	76494 5-19-97
USA - UTU [illegible] UT-01-120	Retamco Operating Inc.	Township 6 South, Range 20 East, S.L.B.M 34: S2NE, N2NW, SENW, N2SE, SESE 35: S2	Uintah County	Utah	7-1-97	7-1-97	76496 5-19-97
USA - UTU [illegible] UT-01-121	Retamco Operating Inc.	Township 6 South, Range 20 East, S.L.B.M 3: ALL 4: Lots 1, 2, 3, 4, S2N2 5: Lots 3, 4, 6, 7, SWSE 6: Lot 1 9: NE 10: W2NW 17: Lots 1, 2	Uintah County	Utah	7-1-97	7-1-97	76498 5-19-97
USA - UTU [illegible] UT-01-122	Retamco Operating Inc.	Township 6 South, Range 21 East, S.L.B.M 11: NWNW, SWSW 15: ALL	Uintah County	Utah	7-1-97	7-1-97	76504 5-19-97
USA - UTU [illegible] UT-01-123	Retamco Operating Inc.	Township 6 South, Range 22 East, S.L.B.M 21: ALL 22: W2SW 24: SESE	Uintah County	Utah	7-1-97	7-1-97	76506 5-19-97
USA - UTU [illegible] UT-01-124	Retamco Operating Inc.	Township 6 South, Range 23 East, S.L.B.M 33: ALL	Uintah County	Utah	7-1-97	7-1-97	76509 5-19-97
USA - UTU [illegible] UT-01-130	Retamco Operating Inc.	Township 6 South, Range 21 East, S.L.B.M 6: Lots 1, 2, 3, 4, 5, 6, 7, S2NE, SENW, E2SW 12: Lots 1, 2, 7, 8, S2 13: Lots 13, 14, 15, W2SW, SESW, S2SE	Uintah County	Utah	9-5-97	10-1-97	76765 10-1-97

EXHIBIT A

Lessor	Lessee	Description	County	State	Dated	Effective	Recorded
USA - UTU [illegible] UT-01-131	Retamco Operating Inc	Township 6 South, Range 22 East, S.L.B.M 7: Lots 11, 12, 13, 14, W2SE, SESE 8: Lots 9, 10 17: W2NE, SENE, W2, SE 18: Lots 5, 6, 7, 8, 9, E2, E2SW 19: Lots 2, 3, 5, S2NE, SENW, E2SW, SE 20: SWNW, SW, S2SE 30: Lots 5, 6, NE, E2NW	Uintah County	Utah	9-5-97	10-1-97	76768 10-1-97
Utah - ML 47777 UT-01-132	Lane Lasnich	Township 6 South, Range 23 East, S.L.B.M 32: ALL	Uintah County	Utah	11-5-97	12-1-97	47777 10-27-97
USA - UTU 28212 UT-01-135	Tamarack Energy Inc.	Township 6 South, Range 21 East, S.L.B.M 33: W2NE, E2NW, NESW, SE	Uintah County	Utah	10-8-74	11-1-96	28212 10-8-74
USA - UTU [illegible] UT-01-135b	Tamarack Energy Inc.	Township 6 South, Range 21 East, S.L.B.M 33: W2NW	Uintah County	Utah	10-8-74	11-1-96	28212b 6-1-99
USA - UTU 3575 UT-01-136	Tamarack Energy Inc.	Township 5 South, Range 19 East, S.L.B.M 33: ALL	Uintah County	Utah	8-1-67	8-1-97	3575 8-1-67
Utah - ML 46685 UT-01-137	Tamarack Energy Inc.	Township 5 South, Range 19 East, S.L.B.M 32: Lot 1	Uintah County	Utah	10-5-94	11-1-94	46685 10-5-94
Sam Oil, Inc UT-01-138m	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2	Uintah County	Utah	11-12-90	11-12-96	495/750 11-21-90
California Utah Oil Development Co UT-01-138a	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2 6: Lots 2, 3, 4, 5, SENW, SE 7: SE 8: Lot 4, SESW	Uintah County	Utah	3-11-71	3-11-97	168/337 5-13-71
[illegible] J. Huber, [illegible] Huber, husband and wife and Kenneth Huber and Joe Ann Huber, husband and wife UT-01-138b	Tamarack Energy Inc	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2 6: Lots 2, 3, 4, 5, SENW, E2SE 7: E2SE 8: Lot 4, SESW	Uintah County	Utah	10-30-67	10-30-97	141/477 11-1-67

January 15, 2001
OPERATING AGREEMENT

EXHIBIT A

Lessor	Lessee	Description	County	State	Dated	Effective	Recorded
Frank Darrell [illegible] (Billy) S. Mary Lou Huber, husband and wife, Dan Beaver Huber, Walker, a [illegible] as his sole and separate property UT-01-138c	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2 6: Lots 2, 3, 4, 5, SENW, E2SE 7: E2SE 8: Lot 4, SESW	Uintah County	Utah	10-30-67	10-30-97	141/484 11-1-67
H. W. Siemak [illegible] Hemaker Royalty Company UT-01-138d	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2 6: Lots 2, 3, 4, 5, SENW, E2SE 7: E2SE 8: Lot 4, SESW	Uintah County	Utah	1-25-78	1-25-97	240/555 8-23-78
H.S. Milam [illegible] B. Milam, husband and wife UT-01-138e	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2 6: Lots 2, 3, 4, 5, SENW, E2SE 7: E2SE 8: Lot 4, SESW	Uintah County	Utah	12-8-77	12-8-96	240/553 8-23-78
The Wiser C[illegible] UT-01-138f	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2 6: Lots 2, 3, 4, 5, SENW, E2SE	Uintah County	Utah	12-7-77	12-7-96	234/342 3-24-78
Agnes Jeanne [illegible] single woman UT-01-138g	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2	Uintah County	Utah	12-3-68	12-3-96	152/78 1-6-69
Jesse Lewis Cheney and Pearlene Cheney husband and [illegible] UT-01-138h	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2	Uintah County	Utah	12-3-68	12-3-96	152/80 1-6-69
Sabine Prod[illegible] Company UT-01-138i	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2	Uintah County	Utah	12-8-77	12-8-96	238/393 7-3-78
Walter Duncan UT-01-138j	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2	Uintah County	Utah	1-16-78	1-16-97	243/718 11-29-78
Ladd Petroleum Corporation UT-01-138k	Tamarack Energy Inc.	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2	Uintah County	Utah	1-20-78	1-20-97	243/720 11-29-78

EXHIBIT A

Lessor	Lessee	Description	County	State	Dated	Effective	Recorded
Jay L. Stone and Loretta Stone, husband and wife UT-01-138L	Tamarack Energy Inc	Township 2 South, Range 2 East, S.L.B.M 5: Lots 1, 2	Uintah County	Utah	7-30-92	7-30-97	553/32 7-16-93
USA - UTU 76819 UT-01-143	Retamco Operating Inc.	Township 5 South, Range 20 East, S.L.B.M 15: NE, N2SE, SESE 19: Lots 5, 6, 7, 8	Uintah County	Utah	11-24-97	1-1-98	76819 11-24-95
USA - UTU 76821 UT-01-144	Retamco Operating Inc.	Township 5 South, Range 21 East, S.L.B.M 31: ALL 33: NWNE, NWNW, S2N2	Uintah County	Utah	11-24-97	1-1-98	76821 11-24-95
Utah - ML 47969 UT-01-155	Retamco Operating Inc.	Township 6 South, Range 22 East, S.L.B.M 7: Lot 3, N2NW, SENW, NWNE, NWSW 9: Lots 2, 5, N2, N2SE, SESE 10: ALL 11: W2, SWNE 15: N2N2 16: Lot 1, S2NW, S2	Uintah County	Utah	5-20-98	6-1-98	47969 5-20-98
Utah - ML 47970 UT-01-156	Retamco Operating Inc.	Township 6 South, Range 23 East, S.L.B.M 16: ALL 36: ALL	Uintah County	Utah	3-18-98	4-1-98	47970 3-18-98
USA - UTU 77520 UT-01-162	Retamco Operating Inc.	Township 6 South, Range 19 East, S.L.B.M 15: SENW	Uintah County	Utah	9-3-98	10-1-98	77520 9-4-98
USA - UTU 77526 UT-01-163	Retamco Operating Inc.	Township 6 South, Range 22 East, S.L.B.M 20: NE, N2NW, SENW, N2SE	Uintah County	Utah	9-3-98	10-1-98	77526 9-4-98
USA - UTU 78254 UT-01-168	Retamco Operating Inc.	Township 6 South, Range 21 East, S.L.B.M 10: S2	Uintah County	Utah	4-1-99	4-1-99	78254 4-1-99
USA - UTU 78435 UT-01-170	Pannonian Energy	Township 5 South, Range 21 East, S.L.B.M 33: Lots 1, 2, 3, 4, N2S2	Uintah County	Utah	6-1-99	7-1-99	78435 7-1-99
USA - UTU 78434 UT-01-171	Pannonian Energy	Township 6 South, Range 20 East, S.L.B.M 34: N2NE, SWNW, SW, SWSE 35: N2	Uintah County	Utah	6-1-99	7-1-99	78434 7-1-99

ADDENDUM "E"

Amended Affidavit of Joe Glennon dated December 8, 2014, including attachments

CLARK B ALLRED - 0055
MICHAEL D. HARRINGTON - 12540
ALLRED, BROTHERSON & HARRINGTON, P.C.
Attorneys for Plaintiff
148 South Vernal Ave. Suite 101
Vernal, Utah 84078
Telephone: (435) 789-7800

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY

STATE OF UTAH

RETAMCO OPERATING, INC., Plaintiff, vs. DAVID SWETT and ALBERTA GAS COMPANY, Defendants.	AMENDED AFFIDAVIT OF JOE GLENNON (Tier 2 Case) Case No.: 140800129 Judge: Edwin T. Peterson

I, Joe Glennon, being duly sworn, hereby affirm and testify as follows:

1. I am over the age of twenty-one (21) years, a resident of Montana, and the vice president-land of Retamco Operating Inc. Based on my position and responsibilities with Retamco Operating Inc., I am the best qualified to provide the information set forth herein.

2. I am competent to provide testimony in this matter. This testimony is based on my personal knowledge, and, if called to testify in this case, my testimony would be consistent with this affidavit.

3. Retamco Operating Inc. owns a 13% overriding royalty

interest, a 25% working interest with a 23.25% net revenue interest in the Gusher Federal 1-33 well and related leases located in Uintah County Utah.

4. The leases involved in this well are Federal Lease UTU 3575 (561.66 gross acres), a State of Utah lease ML 46685 (7.82 acres), fee leases (616.52 acres) and additional HBP lands.

5. The communitized area which relates to the Gusher Federal 1-33 Well is all of Sections 32 and 33 in Township 5 South Range 19 East SLM and all of Section 5 in Township 2 South Range 2 East USM being a total acreage of 608.73 acres.

6. Defendants, David Swett and Alberta Gas Company are the operators of the Gusher Federal 1-33 Well based on the terms of the Operating Agreement attached to the complaint. Defendant Alberta Gas Company succeeded CDX Gas LLC as the operator and became the operator of the Gusher Federal 1-33 Well on December 1, 2002.

7. The Operating Agreement provides that it is binding on all successors and assigns. See Article XV(B)

8. Production reports for the Gusher Federal 1-33 Well show that there has been oil and gas production from the Gusher Federal 1-33 Well since Defendant Alberta Gas Company became the operator.

9. Those reports show that Defendant, Alberta Gas Company has produced 15,558 barrels of oil and 22,957 mcf of gas from the Gusher Federal 1-33 Well.

10. Defendant Alberta Gas Company has not paid any royalties

or any other amounts to Retamco Operating Inc. for its interest in the Gusher Federal 1-33 Well and the related leases as a result of that production.

11. At the rate of $75.00 per barrel for oil, the oil production from Gusher Federal 1-33 Well had a value of $1,166,850.00 and at the rate of $4.00 per mcf the gas production from the Gusher Federal 1-33 Well had a value of $91,824.00. The Gusher Federal 1-33 Well has generated revenue of $1,258,674.00.

12. Retamco Operating Inc.'s overriding royalty and its net royalty interest should have resulted in payment from that production in the amount of $465,628.00 which has not been paid.

13. Several requests have been made to the Defendants for an accounting and for payment of the royalties owed but those requests have been ignored resulting in this law suit being filed.

14. Based on the production records and the prices paid for oil and gas, I calculate that $465,628.00 is owed to Retamco Operating Inc. for its interests in the Gusher Federal 1-33 Well and leases during the time period the Defendants operated the well.

15. It is requested that the court enter judgment for that amount together with all legal fees and costs incurred.

16. Article V(A)1 of the Operating Agreement, attached to the complaint, provides that the operator of the well can be removed for good cause and Article V(A)3 provides that operator shall be removed if it is insolvent.

17. It appears that Alberta Gas Company is insolvent. It has not filed annual reports and its corporate status has expired. It has not paid royalties, has not accounted for monies received, there is a Notice of Violation in the Department of Natural Resource file showing that the well site has not been maintained and the Defendants have not responded to that notice (see the attached letter dated October 2, 2014 from the Division of Oil, Gas and Mining to the Defendants) and the Defendants have not responded to this lawsuit.

18. Failure to pay monies owed should be sufficient good cause to remove the Defendants as operator of the well and lease.

19. The Plaintiff requests that the Court order that the Defendants be removed as the operator.

20. Article VII(B) of the Operating Agreement grants parties who own an interest in the well and lease, such as Retamco Operating Inc. a security interest in the interest of the operator, Alberta Gas Company under the Utah Commercial Code to secure payment for the amounts owed.

21. Plaintiff requests the court to order that the lien be foreclosed and that the interest of the Defendants in the subject well and related leases be sold at foreclosure sale and the proceeds be used to pay the amounts owing to the Plaintiff including all legal fees and costs incurred.

22. Plaintiff has been required to retain an attorney both in

Texas and in Utah to enforce its rights in this case. The operating agreement provides for reimbursement of legal fees and costs incurred.

23. It is requested that judgment enter for all costs and fees incurred.

Dated this 5th day of December, 2014.

Joe Glennon

STATE OF MONTANA)
) ss.
COUNTY OF Carbon)

On the 5th day of December, 2014, personally appeared before me, Joe Glennon, and signed the above instrument.

Notary Public

BONNIE BERMES
NOTARY PUBLIC for the
State of Montana
Residing at Roberts, MT
My Commission Expires
September 14, 2018

ATTACHMENT

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
MICHAEL R. STYLER
Executive Director
Division of Oil, Gas and Mining
JOHN R. BAZA
Division Director

October 2, 2014

Certified Mail #7011 2970 0001 8828 1764

Dave Swett
Alberta Gas Company
933 E 2000 N
Vernal, Utah 84078-9553

DIVISION ORDER

Subject: Notices of Violation for the Federal 1-27 and Federal 1-33 Wells

33 5S 19E

Dear Mr. Swett:

The Division of Oil, Gas and Mining (Division) issued Alberta Gas Company (Alberta) Notices of Violation (NOV's) for the Federal 1-27 (API 43-047-30181) and Federal 1-33 (API 43-047-30300) wells on July 16, 2014. The compliance deadline for both notices was August 30, 2014. The notices were sent to the last address you provided to the Division, which was also the address for Summit Operating, LLC (Summit). Summit personnel have assured me the NOV's have been forwarded to you.

Twice I have left telephone voice messages for you regarding the NOV's. On September 10, 2014, and again on September 23, 2014, I asked you to return my calls so we could discuss a plan to resolve the well violations. To date my calls have not been returned.

Therefore, the Division hereby Orders Alberta to meet the NOV requirements within 15 days of the date of this Order.

Alberta has the right to appeal the Division Order by filing to the Board of Oil, Gas and Mining (Board) a request for review, according to procedures set forth in Utah Administrative Code R649-10-6. A review of a Division Order must be filed with the secretary to the Board, Julie Ann Carter (801) 538-5277, within 30 days of issuance of the Order.

In the event Alberta does not comply with this Order, the Division will file for a formal hearing before the Board in accordance with Utah Administrative Code R641 seeking bonding and civil penalties. If the Board determines, after an adjudicative proceeding, that any person has violated any provision of this chapter, or any permit, rule or order made under the provision of this chapter, that person is subject, in a civil proceeding, to a penalty not exceeding $5,000 per day for each day of violation (Utah Code 40-6-11.(4)(a)). If the Board determines that the violation is willful, that person may be fined not more than $10,000 for each day of violation (Utah Code 40-6-11.(4)(b)).

1594 West North Temple, Suite 1210, PO Box 145801, Salt Lake City, UT 84114-5801
telephone (801) 538-5340 • facsimile (801) 359-3940 • TTY (801) 538-7458 • www.ogm.utah.gov

UTAH DNR OIL, GAS & MINING

It is recommended that you contact the Division immediately upon receipt of this Order. For further assistance please contact Dan Jarvis, Operations Manager, at 801-538-5338 or John Rogers, Associate Director, at 801-538-5349.

Sincerely,

Clinton Dworshak
Compliance Manager

cc: John Rogers, Associate Director
Dan Jarvis, Operations Manager
Steve Alder, Assistant Attorney General
Compliance File
Well Files

MAILING CERTIFICATE

Debbie Reed, legal assistant of Allred, Brotherson & Harrington, P.C., attorneys for Plaintiff, certifies that she served the attached AMENDED AFFIDAVIT OF JOE GLENNON upon Defendants by placing a true and correct copy in an envelope addressed to:

David Swett, Agent or DBA of Alberta Gas Company
933 E. 2000 N.
Vernal, Utah 84078

David Swett
933 E. 2000 N.
Vernal, Utah 84078

and deposited the same, sealed, with first class postage prepaid thereon, in the United States Mail at Vernal, Utah, on the 12th day of January, 2015.

/s/Debbie Reed
Debbie Reed